TAX MANAGEMENT
PORTFOLIOS™

FOREIGN INCOME

Business Operations in Denmark

by

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Business Operations in Denmark

PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Denmark*, No. 7100-2nd, contains the basic information to enable a business to determine the best method of conducting its operations in Denmark from both a tax and a general legal point of view. It analyzes in detail the statutory and procedural framework of Danish income taxation as it applies to both individuals and corporations. This analysis also includes many other legal details vital to the organization of a Danish company. In addition to a detailed explanation of the income tax, the Portfolio discusses value added tax, and gift and inheritance tax.

The Worksheets in the Portfolio include an example of a computation of an individual's income tax, the form for registration of highly-paid employees under the expat tax regime and articles of association for both joint stock and private limited companies.

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DETAILED ANALYSIS

I. Denmark — General Background

A. The Country

The Kingdom of Denmark consists of Denmark, the Faroe Islands and Greenland. Denmark is one of the three Scandinavian countries and is situated in the northern part of Europe. To the south, Denmark borders the Federal Republic of Germany.

The Faroe Islands in the North Atlantic and Greenland, the largest island in the world, are self-governing communities within the Kingdom of Denmark. Since June 21, 2009, Greenland has enjoyed wider powers of self-government, encompassing the judicial system, the right to explore natural resources and many aspects of diplomatic affairs, but not defense matters. The Faroe Islands and Greenland have independent tax systems and are not covered in this Portfolio, which covers only the Danish tax system.

B. Political/Governmental Organization

Denmark is a constitutional monarchy. The Danish Constitution,[1] on which it is based, dates from 1849 and was last amended in 1953.

Formally, the reigning Danish monarch, which is currently Her Majesty Queen Margrethe II, has ultimate executive authority over the Government of Denmark and holds, co-jointly with the Danish Parliament (*Folketinget*), legislative power. In practice, the monarch has no political influence, and the powers vested in the monarch can only be exercised through the ministers of the Government.

Denmark is a representative democracy, which means that the Danish citizens elect representatives to sit in the Parliament. The Danish Parliament has 179 seats. General elections are held every four years; however, the Prime Minister (*Statsminister*) may call for elections before the end of the four-year term.

Denmark has been a member of the European Union since January 1, 1973. Greenland and the Faroe Islands are not members of the European Union.

The Danish governmental system is negative parliamentarism, which means that the Government may never have a majority against it, and it is not required to be supported by an actual majority. On the formation of a new Government, the leader of the political party who has the support of the largest number of seats in the Parliament is invited by the monarch — after a consultation with representatives of each political party — to lead the negotiations on forming the new Government. The new Government, including its ministers, is then formally appointed by the monarch following the conclusion of the negotiations.

C. Statues/Sources of Law

The most important piece of legislation in Denmark is the Constitution. The Constitution divides power into three independent branches in order to avoid the abuse of power. The threefold division consists of the legislative power (the Parliament), the executive power (the Government) and the judicial power (the courts of law). The Constitution also comprises fundamental rights and freedoms, including the freedom of speech, freedom of press, freedom of religion, freedom of assembly, freedom of association and right to property. Also, the Constitution stipulates that no taxes may be imposed, altered, or repealed except by statute laws.[2]

The Danish Parliament may legislate on everything within the limitations imposed by the Constitution and International obligations. Denmark has no constitutional court *per se*, but laws can be declared unconstitutional and void by the Danish Supreme Court.

The normal legislative process is only regulated by a very few constitutional provisions. Any member of the Danish Parliament is entitled to introduce a bill for resolution by the Parliament, but most legislative proposals are introduced by the Government. A bill must be read three times in Parliament before it can be passed. For a bill to be passed, the Constitution requires that more than half of the members of Parliament are present and take part in the voting. Most decisions are based on a simple majority.

D. Court System

The Constitution assigned judicial powers and administrative functions to the Courts of Denmark, including probate matters, bankruptcy, bailiffs court, land registration and general administration.

Denmark is divided into 24 jurisdictions, each of them with a district court. Generally, most of the cases begin in the district courts in first instance with the possibility to appeal to one of the two high courts of Denmark, the Eastern High Court and the Western High Court. Cases decided at a high court level can be appealed to the Supreme Court, the highest instance in Denmark, if a so-called third instance permission is granted by the Appeals Permission Board. The Supreme Court most often handles precedent-setting cases and, therefore, is also responsible for the development of the law.

According to the Constitution, the administration of justice in Denmark must be public to the greatest possible extent.

[1] Act No. 169 of June 5, 1953, the Constitution of the Kingdom of Denmark (*Grundloven* or Constitution).

[2] Constitution, Sec. 43.

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E. Arbitration

Denmark has two permanent arbitration institutions: The Danish Institute of Arbitration, which also offers mediation, and the Danish Building and Construction Arbitration Board.

Arbitration tribunals can be constituted either through an institution such as the above or in an "ad hoc" manner whereby the parties determine the procedure themselves without the involvement of an institution. In such case, the procedure of the arbitration will take place in accordance with the guidelines agreed upon by the parties.

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II. Operating a Business in Denmark

A. *Foreign Investment Regulations*

Under European Union (EU) laws, individuals and companies from other EU Member States have the right to establish a business in Denmark, and individuals from other EU Member States have the right to seek employment in Denmark. The Danish government also encourages investments from non-EU countries, and general permission to invest in most fields of commerce and industry is readily obtainable.

No special incentives are granted to foreign enterprises locating in Denmark, nor are there generally any discriminatory provisions.

Advice concerning exports may be obtained from the Trade Council of the Danish Foreign Ministry (*Danmarks Eksportråd*), but state aid incentives are not permissible under EU laws. The Trade Council advises on, among other things, obtaining grants from the EU funds for the development of the new Member States. The Council further renders advice in connection with the development of business relationships between Danish companies and foreign subcontractors. The Trade Council has approximately 75 employees in Denmark and 230 employees abroad located at more than 100 embassies, consulates general and trade commissions.

B. *Exchange Controls*

The Danish foreign exchange regulations were abolished with effect from October 1, 1988.[3]

1. *Direct Investment*

Historically, direct investments have been allowed to be made without any governmental permission, except for investments in the weapons industry, which have required permission from the Ministry of Justice. However, on May 4, 2021, the Danish Parliament adopted an Act on Screening of Foreign Direct Investments in Denmark ("the Act"), which entered into force on July 1, 2021.

The Act applies to investments and agreements completed on or after September 2021, and introduces a mandatory authorization scheme for certain foreign investments and special economic agreements within particularly sensitive sectors and or concerning certain activities such as the defense sector, IT security activities, other critical technology and critical infrastructure, as well as a voluntary notification scheme for investments, etc., in all other sectors. The authorization scheme requires prior authorization from the Danish Business Authority before certain foreign investments, etc., in Danish companies within the particularly sensitive sectors or concerning certain activities may be completed.

The voluntary notification scheme for all other sectors allows for the voluntary notification of certain foreign investments, etc., to the Danish Business Authority if there is a risk that the investment concerned may constitute a threat to Danish national security or public order. The Danish Business Authority has up to five years after an investment is made to investigate whether the investment constitutes a threat to national security or public order and, in such cases, potentially to order the investment to be divested of. Thus, the purpose of the voluntary notification scheme is to provide an opportunity to clarify an investment in advance, and thereby avoid the risk of a potential divestment order at a later date. It is expected that the Danish Business Authority will issue executive orders supplementing the Act and providing further details and guidance before July 2021.

The Danish Business Authority and the Ministry of Industry have issued three executive orders to provide further details and guidance on the Act.[4]

2. *Financing Danish Subsidiaries*

A Danish subsidiary may finance its activities in Danish kroner or in any foreign currency. No permission is required for loans to be made abroad and no requirements are set forth as to the terms of such loans.

3. *Financing Loans from Parent Companies*

No restrictions apply to financing loans from a parent company.

4. *Cash Pooling Arrangements*

Under the Companies Act (*Selskabsloven*),[5] cash pooling arrangements with foreign parent companies are permitted.[6] The Danish Business Authority[7] may issue regulations concerning the application of the relevant provisions. According to the Danish Business Authority, a Danish company may directly or indirectly make funds available, make a loan or place security for a parent company if the parent company is a public limited company (*Aktieselskab* or A/S), a partnership limited by shares, a private limited company (*Anpartsselskab* or ApS) or a company of a similar legal nature, provided the parent company is domiciled in:

(i) The European Union, the European Economic Area (EEA) or Switzerland, or

(ii) Australia, Canada, Chile, Hong Kong, Israel, Japan, South Korea, New Zealand, Singapore, Taiwan, the United Kingdom or the United States.

5. *Payments Between Residents and Nonresidents*

No limitations are imposed on indirect investments (for example, portfolio investments in foreign bonds and shares and other payments relating to transactions between residents and nonresidents). However, all transfers must be made via authorized exchange dealers (i.e., banks and certain brokers). An individual may carry cash or cash equivalents of an amount of up to 10,000 euros when traveling in or out of Denmark. Larger amounts must be declared to the customs authorities. The same applies if cash or cash equivalents of more than 10,000 euros are mailed or sent in or out of Denmark by courier, etc.

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[3] Executive Order of the Ministry of Industry, No. 658 of July 11, 1994.

[4] *See* Executive Order of the Ministry of Industry, No. 1491 of June 25, 2021; Executive Order of the Danish Business Authority, No. 1454 of June 24, 2021; and Executive Order of the Ministry of Industry, No. 1455 of June 24, 2021.

[5] Act No. 763 of July 23, 2019, Companies Act (*Selskabsloven* or CA).

[6] CA, Sec. 211.

[7] Formerly, the Commerce and Companies Agency.

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6. *Foreign Currency Accounts*

Resident individuals and legal persons may make deposits in foreign currency accounts with foreign banks.

Council Directive 2011/16/EU of February 15, 2011, on administrative cooperation in the field of taxation, which repealed Directive 77/799/EEC, has been implemented into Danish law.[8] Council Directive 2014/107/EU of December 9, 2014, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, was implemented as of January 1, 2016.

7. *Introduction of the Euro*

Denmark is not one of the participating EU Member States to have converted their local currency to the euro. Denmark opted out of the common currency when the Maastricht Treaty was approved by referendum. Effective January 1, 2016, the euro is the single common currency shared by most EU Member States, except for Bulgaria, Czechia, Hungary, Poland, Romania, and Sweden.[9] Even though the Danish kroner is not one of the legacy currencies that was converted to the euro, conversion to the euro elsewhere in the European Union has required the amendment of certain Danish laws.

Under the Act on Annual Accounts (*Aarsregnskabsloven*),[10] Danish companies may prepare their annual accounts in Danish kroner, euros or any other currency that may be considered relevant, in light of the business operations concerned. The determination of the relevant currency should be made in accordance with the International Accounting Standards (IAS). Once a company has decided which currency to use, it may change to another currency only in special circumstances.

Under the Companies Act, the share capital of a Danish company is to be stated in Danish kroner or euros.[11] The Danish Business Authority may issue regulations permitting the issuance of shares in other currencies.

Pursuant to amendments to the Tax Control Act (*Skattekontrolloven*),[12] bookkeeping materials may be prepared in foreign currency in accordance with the Bookkeeping Act (*Bogføringsloven*) and the Act on Annual Accounts.

Any filing required under the Tax Control Act is to be made in kroner. Danish and foreign corporate taxpayers and individual taxpayers conducting business activities may, however, elect to prepare their annual tax reports in a foreign currency of their choice and convert the net taxable amount into Danish kroner.[13] Before the beginning of the tax year, the taxpayer must notify the Danish Tax Agency (*Skattestyrelsen* — DTA) of the currency it intends to use for reporting purposes and the name of the central bank providing the rate that will be applied for conversion purposes. The conversion into Danish kroner of the taxable result made up in the foreign currency is determined by applying the average rate of the foreign currency for the income year in question. For subsequent tax years, the taxpayer may change the currency used for reporting purposes to the extent such a change can be justified, taking into consideration the position of the taxpayer's business or of the group of which the taxpayer is a member. To change the reporting currency, the taxpayer must notify the DTA of the change prior to the beginning of the income year in which the new currency will be applied.

Under the Bookkeeping Act,[14] postings may be made in Danish kroner, in euros or in any other relevant currency. If the bookkeeping is done in a foreign currency, the bookkeeping material must contain information making it possible to convert the posted figures into Danish kroner. Similar provisions are set forth in the Value Added Tax (VAT) Act (*Momsloven*).[15]

Pursuant to the notes accompanying the Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments,[16] the euro is to be treated in the same way as any other foreign currency. The introduction of the euro was not itself a taxable event. However, if a Danish taxpayer decides to convert a loan originally obtained in a legacy currency into euros, any gain realized at the time of conversion must be included in the taxpayer's taxable income. Conversely, losses incurred in such circumstances are generally tax deductible.[17]

C. *Trade and Commerce Regulations*

1. *Imports and Exports*

a. *Licenses and Quotas*

Generally, there are very few restrictions on the import or export of goods. However, the import and export of certain goods and services are restricted or require export permits, for example, under the EU regime for dual-use items.[18] Further, Denmark participates in a number of international treaties and multilateral initiatives regulating the export of certain goods and services, such as the Australia Group (AG), the Missile Technology Control Regime (MTCR), Nuclear Supplier's Group (NSG), the Wassenaar Arrangement and the Proliferation Security Initiative (PSI).

b. *Import Duties*

Generally, no import duties are levied on imports from other EU Member States. However, certain exceptions under EU regulations apply to the importation of agricultural products. Denmark has entered into agreements with the EEA countries (i.e., Iceland, Liechtenstein and Norway) that reduce, or provide exemption from, the duty otherwise imposed on imports and exports. No free trade agreement currently exists with

[8] Act No. 118 of February 7, 2012 (*International Bistandslov*).

[9] The United Kingdom was also among the countries not to adopt the euro.

[10] Act No. 1580 of December 10, 2015, the Act on Annual Accounts (*Aarsregnskabsloven* or AA), Sec. 16.

[11] CA, Sec. 4.3.

[12] Act No. 1535 of December 19, 2017, the Tax Control Act (*Skattekontrolloven* or TCA), as amended, Sec. 28.

[13] TCA, Sec. 29.

[14] Act No. 648 of June 15, 2006, Bookkeeping Act (*Bogføringsloven* or BKA), Secs. 7.4 and 7.5.

[15] Act No. 1021 of September 26, 2019, the Act on Value Added Tax (*Momsloven* or VAT Act), as amended, Sec. 55.1.

[16] Consolidated Act No. 1390 of September 29, 2022, the Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments (*Kursgevinstloven* or TGLC), as amended.

[17] TGLC, Sec. 6.

[18] Council Regulation (EC) No 428/2009 of May 5, 2009, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

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the United States, but a free trade agreement has been concluded between the European Union and Canada.

If the imported goods are kept in a bonded warehouse, no duty is levied. As a rule, the customs duty is levied on the value of the goods imported; however, in certain circumstances, the amount of duty to be paid is related to the quantity of the particular goods imported. Denmark also complies with the customs rules as laid out in EU regulations.[19]

VAT on imports from other EU Member States must be accounted for in accordance with the provisions concerning intra-EU acquisitions, while imports from non-EU countries are subject to import VAT at the rate of, currently, 25%.

A shipping agent may handle the customs formalities, but an individual or a corporation may be registered as an importer. If the individual or the corporation is registered for VAT purposes, registration as an importer is a mere formality.

The importer must file a clearance application together with relevant documents with the customs authorities. The customs authorities may require an import license or a certificate of origin to verify that the importation of the goods concerned is in compliance with any possible import restrictions.

A foreign exporter is not required to register with the customs authorities. However, under the VAT Act, a foreign enterprise may be required to register for VAT purposes if the foreign enterprise has a taxable turnover of goods in Denmark. The definition of "taxable turnover" is far-reaching, and a foreign enterprise may be required to register for VAT purposes even though its activities do not amount to a permanent establishment (PE). A foreign exporter may also be required to register under the rules concerning distance sales. For further details, see IV.E.6., below.

2. General Regulation of Business

The conduct of business in Denmark is regulated in a number of ways. Certain registration requirements are imposed. Foreign Service Providers are required to register in the Register of Foreign Service Providers (RUT).[20] The registration requirement applies to foreign businesses providing services in Denmark irrespective of whether employees are stationed in Denmark. Registration for these providers is done electronically.[21] Any individual or company carrying on business in Denmark must register for VAT purposes (if its taxable turnover exceeds DKK 50,000 annually) and for other tax purposes such as withholding tax on salary and dividend payments. Depending on the specific kind of business carried on in Denmark, other registration requirements may apply.

Nationals of a non-Nordic country that is not an EU Member State or an EEA country need a residence and work permit before arriving in Denmark. Foreigners with special qualifications who are seeking employment in areas with a shortage of Danish labor have easier access to residence and work permits in Denmark. In particular, permits are granted to foreign information technology (IT) specialists (who can provide documentary proof of at least three years of IT education at university level), engineers, mathematicians, statisticians, physicists, biophysicists, chemists, pharmacists, biologists, geologists, radiographers, doctors and nurses. EU/EEA citizens and Swiss citizens are encompassed by the rules of free movement of people and services. Normally, a work permit is cancelled if an employment is terminated.

All trade is subject to the Marketing Act (*Markedsføringsloven*).[22] The main function of this Act is to establish guidelines for good business practices. Businesses subject to the Act must exercise proper marketing practices taking into consideration the interests of consumers and other businesses, and the common interests of society. Thus, the principle of good business practice applies to trade between professionals as well as to trade between a professional and a consumer.

A Consumer Complaint Board has been established and a consumer Ombudsman appointed under the Marketing Act.

a. Monopolies

The objective of the Competition Act (*Konkurrenceloven*),[23] is to promote efficient resource allocation by means of workable competition to the benefit of businesses and consumers. The Competition Act applies to all kinds of business. Chapter 2 of the Competition Act contains a prohibition on certain agreements limiting free competition and Chapter 3 contains provisions concerning the abuse of an undertaking's dominant position. Under Chapter 2a, the Competition and Consumer Authority (DCCA) may order a dominant undertaking to submit its general trading terms and may require such terms to be revoked or altered if they are found to be in violation of the Competition Act.

The provisions of Chapters 2 and 3 do not, however, apply where an anti-competitive practice is a direct or necessary consequence of public regulation. With regard to local councils, an anti-competitive practice will only be considered a direct or necessary consequence of public regulation if the practice is necessary to allow the local council concerned to carry out the tasks assigned to it in accordance with current law. Nor does Chapter 2 apply if the agreement limiting competition or the coordinated practice is exempted under EU law. Finally, Chapter 2 does not apply to agreements within the same group of undertakings.

The Competition Act does not apply to agreements relating to pay and working conditions.

(1) Anti-Competitive Agreements

Under Chapter 2 of the Competition Act, an undertaking may not enter into any agreement, the objective of which is directly or indirectly to restrict competition or the effect of which

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[19] Commission Regulation (EEC) No. 2454/93 of July 2, 1993 (lays down the provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code; the customs code contains a very detailed listing of tariffs imposed, a definition of the origin of goods, and rules concerning customs values, the importation of goods into the European Union and customs declarations) and Regulation (EU) No. 952/2013 of the European Parliament and of the Council of October 9, 2013 (a new customs code that came into force as of January 1, 2016; Title 16 contains detailed rules on electronic declaration and simplification procedures).

[20] Regulation No. 627 of June 24, 2019.

[21] https://indberet.virk.dk/myndigheder/stat/ERST/Register_of_Foreign Service Providers RUT (Registration Site).

[22] Act No. 1216 of September 25, 2013, Marketing Act (*Markedsføringsloven*), as amended.

[23] Act No. 869 of July 8, 2015, Competition Act (*Konkurrenceloven*), as amended.

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is a direct or indirect restriction of competition.[24] The Competition Act contains a non-exhaustive list of prohibited agreements, such as those that:

(i) Fix purchase or selling prices or other trading conditions;

(ii) Limit or control production, sales, technical development or investment;

(iii) Share markets or sources of supply;

(iv) Apply dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage;

(v) Make the conclusion of contracts subject to acceptance by the other contracting party of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts;

(vi) Coordinate the competitive practices of two or more undertakings through the establishment of a joint venture; or

(vii) Determine binding resale prices or in any other way seek to induce one or more trading partners not to deviate from recommended resale prices.

These provisions also apply to decisions made by an association of undertakings and to concerted practices between undertakings.

An agreement entered in violation of Section 6 of the Competition Act is void unless it is exempted under Section 7, 8 or 10 of that Act, or the business concerned has filed a notification under Section 9 of the Act with the DCCA.

(a) De Minimis Exclusions

The prohibition set out in Section 6.1 of the Competition Act does not apply to an agreement between undertakings, a decision made by an association of undertakings or concerted practices between undertakings, in cases where:[25]

(i) The combined market share held by the parties to the agreement does not exceed 10% on any relevant market affected by the agreement, where the agreement is made between undertakings that are actual or potential competitors on any of such market (agreements between competitors); or

(ii) The market share held by each of the parties to the agreement does not exceed 15% on any of the relevant markets affected by the agreement, where the agreement is made between undertakings that are not actual or potential competitors on any of those markets (agreements between non-competitors).

The exceptions referred to above do not apply, if the object of the agreement, the decision or the concerted practices is to restrict competition.

Irrespective of the above, the prohibition in Section 6.1 will apply to an agreement between undertakings, a decision made by an association of undertakings or concerted practices between undertakings if the agreement, etc., together with other similar agreements, etc., restricts competition.

(b) Cartel Agreements

The punishment for anyone who acts in breach of Section 6.1 by entering into a cartel agreement may face imprisonment for up to one year and six months if the breach is intentional and of grave nature, especially due to the extent of the infringement or its potentially damaging effects.[26]

Anyone who acts in breach of Section 6 of the Competition Act by entering into a cartel agreement will, upon application, be granted withdrawal of the charge that would otherwise have led to a fine or imprisonment being imposed for participating in the cartel, and a possible claim for confiscation will not be raised in case the applicant, as the first one, approaches the authorities about the cartel, submitting information that was not in the possession of the authorities at the time of the application, etc.[27]

A cartel agreement means an agreement, concerted practice or decision between undertakings, operating at the same level of trade, on:

(i) Prices, profits, etc. for the sale or resale of goods or services,

(ii) Restrictions on production or sales,

(iii) Sharing of markets or customers, or

(iv) Coordination of bids.

(2) Competition and Consumer Authority

The DCCA supervises compliance with the Competition Act and any regulations issued thereunder,[28] while the Competition Council has the overall responsibility for the DCCA's administration of the Competition Act and rules adopted under that Act. In addition, the Council renders decisions in cases of principle or of particular importance. Finally, the Council approves competition analyses initiated by the DCCA.[29]

The DCCA may take up cases on its own initiative, upon notification (for example, by parties to an agreement), based on a complaint or as a result of a referral from the European Commission. The DCCA decides whether a complaint contains sufficient grounds for initiating an investigation or making a decision.

If the DCCA finds that a business has entered into agreements in violation of Chapters 2 and 3 of the Competition Act, it has certain powers to issue an order to terminate any provisions having a detrimental effect on competition. In such orders, the DCCA may, under Section 16 or with reference to Articles 101 or 102 of the Treaty on the Functioning of the European Union (TFEU),[30] include an obligation:

(i) To terminate agreements, decisions, trading conditions, etc., in full or in part.

[24] Competition Act, Sec. 6.
[25] Competition Act, Sec. 7.

[26] Competition Act, Sec. 23.3.
[27] Competition Act, Sec. 23a.1.
[28] Competition Act, Sec. 15.
[29] Competition Act, Sec. 15.3.
[30] Treaty on The Functioning of The European Union (TFEU), 2012/C 326/01.

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(ii) Not to exceed stated prices or profits, or to calculate prices or profits using specified calculation rules.

(iii) For one or more of the undertakings concerned, to sell to specified buyers on the conditions usually applied by the undertaking(s) in comparable sales. An undertaking is, however, always entitled to demand payment in cash or adequate security.

(iv) To grant access to an infrastructure facility that is necessary for the marketing of a product or service.

This list in the Competition Act is not exhaustive.

The DCCA may further order commitments to be made by the undertakings that address the concerns of the DCCA in relation to agreements that directly or indirectly restrict competition, that are found to abuse a dominant position, or that are otherwise in violation of Article 101 or 102 of the TFEU, and that are to be binding on the undertakings. Commitments may be limited in time. The DCCA may issue such orders as are necessary to ensure the timely and correct fulfillment of the binding commitments.

The DCCA may revoke such a decision if:

(i) The facts of the situation have changed in any respect that was important for the decision;

(ii) The conduct of the parties to an agreement, etc., is contrary to the commitments made; or

(iii) The decision was based on incorrect or misleading information from the parties to the agreement, etc.

The DCCA may demand all information, including accounts, accounting records, transcripts of books, other business documents and electronic data, that it deems necessary to carry out its tasks under the Competition Act or to determine whether the provisions of the Competition Act will apply to a particular situation.

(3) Conditions for Exemptions

The DCCA may, upon notification, exempt agreements between undertakings, a decision made by an association of undertakings or concerted practice between undertakings from the prohibition in Section 6 of the Competition Act if the DCCA finds that the following conditions are fulfilled for the agreement, decision, or concerted practice in question:[31]

(i) It contributes to improving the efficiency of the production or distribution of goods or services, or to the promotion of technical or economic progress;

(ii) It provides consumers with a fair share of the resulting benefits;

(iii) It does not impose on the undertakings restrictions that are unnecessary for attaining these objectives; and

(iv) It does not make it possible for the undertakings to eliminate competition with respect to a substantial part of the products or services in question.

An application for exemption in accordance with the above must be submitted to the DCCA. The DCCA has laid down specific rules on notification, including rules on the use of special notification forms, and on the submission of a non-confidential version of a notification.

A decision granting an exemption must specify the period for which the exemption is effective. The DCCA may stipulate certain conditions for the granting of the exemption. If the exemption is granted, it may have effect as of the time of notification. An exemption may be extended on application. The DCCA may refuse to consider an application for exemption if the DCCA finds that the agreement, etc., may appreciably affect trade between EU Member States.

The DCCA may change or revoke an exemption if:

(i) The facts of the situation change in any respect that was important for the DCCA's decision;

(ii) The parties to the agreement, etc., fail to comply with the terms imposed; or

(iii) The DCCA's decision was been on incorrect or misleading information from the parties to the agreement, etc.

Instead of granting an exemption, the DCCA may issue a statement confirming that an agreement does not fall within the scope of the prohibition set out in Section 6.1 and that, accordingly, it has no grounds for issuing an order under Section 6.4.

An application under Section 8 must be filed in accordance with the terms and conditions set forth in Executive Order No. 171/2013 of February 26, 2013 regarding rules for notification of agreements, etc. under the Competition Act.

The Minister for Industry, Business and Financial Affairs will, after consultation with the DCCA, lay down rules on the granting of block exemptions from the prohibition in Section 6.1 for groups of agreements, decisions and concerted practices that fulfill the conditions in Section 8.1.[32] A number of such regulations, implementing the EU Commission regulations, have been issued, including:

(i) Executive Order No. 760 of June 23, 2010 implementing the Commission Regulation (EU) No. 461/2010 of May 27, 2010, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector;

(ii) Executive Order No. 63 of January 28, 2011 implementing the Commission Regulation (EU) No. 1217/2010 of December 14, 2010, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements;

(iii) Executive Order No. 64 of January 28, 2011 implementing the Commission Regulation (EU) No. 1218/2010 of December 14, 2010, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialization agreements;

(iv) Executive Order No. 417 of April 28, 2014 implementing the Commission Regulation (EU) No. 316/2014 of March 21, 2014, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements; and

[31] Competition Act, Sec. 8.

[32] Competition Act, Sec. 10.

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(v) Executive Order No. 739 of June 23, 2010 implementing the Commission Regulation (EU) No. 330/2010 of April 20, 2010, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreement and concerted practices.

(4) Assessment of Dominant Position

The DCCA may order an undertaking with a dominant position in the market to submit its general trading terms if:[33]

(i) A competitor files a reasoned complaint;

(ii) Special conditions prevail in the market; and

(iii) As a result of these conditions, the DCCA sees a special need to acquire insight into the ways in which the dominant undertaking fixes its prices, discounts, etc.

The order must cover only the markets that the complaint concerns. An order runs for a period of two years from the time the decision is final.

The term "terms and conditions for trading" means the basis applied at any time by an undertaking in generally fixing its prices, discounts, market contributions and free services, and the terms and conditions on which the undertaking will grant financial benefits to its trading partners.

Any business that has submitted its trading terms may ask the DCCA for an assessment of those terms. The DCCA must issue a decision within six months. If a decision is not issued within the time limit, the terms will be considered approved. The DCCA may refrain from making a decision if it finds that such a decision may have implications for whether one or more undertakings abuse a dominant position in the common market or a significant part of the market and trade between the EU Member States may be appreciably affected.[34]

If the terms and conditions submitted to the DCCA are contrary to the provisions concerning the abuse of a dominant position or are administered in contravention of those provisions, the DCCA may order revocation or alteration of one or more of the provisions in the trading terms. If the trading terms are prepared in such a manner that the DCCA will have an inadequate basis for assessing whether they are contrary to the prohibition against abuse of a dominant position, the DCCA may order that one or more of the terms be further specified.

(5) Abuse of Dominant Position

Under Part 3 of the Competition Act, one or more undertakings may not abuse its or their dominant market position. An abuse of a dominant position may, for example, consist of:

(i) Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(ii) Limiting production, sales or technical development to the prejudice of consumers;

(iii) Applying dissimilar conditions to equivalent transactions with trading partners, thereby placing them at a competitive disadvantage; or

(iv) Making the conclusion of contracts subject to acceptance by the other contracting party of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.[35]

The DCCA may issue an order to put an end to the infringement of the prohibition against abusing a dominant position. Acting on any concerns it may have, the DCCA may also decide that commitments made by an undertaking will be binding.

(6) Public Aid and Distortion of Competition

The DCCA may issue orders for the termination or repayment of aid granted by public funds to support certain forms of commercial activity.[36] An order may be issued if: (i) the direct or indirect object or effect of the aid is the distortion of competition; and (ii) the aid is not lawful according to public regulation. The minister in question or the relevant municipal supervisory board decides whether the aid granted is in accordance with public regulation unless the decision has to be made by another body under applicable laws. Such a decision must be made no later than four weeks after receipt of the DCCA's request. The DCCA may extend this time limit.

An order for repayment of aid may be issued to private undertakings, self-governing institutions and corporate undertakings owned fully or partly by public authorities. The Minister for Industry, Business and Financial Affairs may lay down specific rules to the effect that orders for repayment of aid may also be issued to specific quasi-corporate undertakings owned fully or partly by public authorities.

The powers of the DCCA to order repayment of public aid are barred under limitation after a period of five years has elapsed from when the aid was paid out. Interest must be paid at the interest rate fixed at any time under the European Union's state aid rules to be applied in the repayment of state aid. The DCCA may stipulate that compound interest will accrue from the date when the unlawful aid was first made available to the recipient until the date on which the aid is repaid. The sum of interest that has accrued in the preceding year will accrue interest each subsequent year.

On notification, the DCCA may declare that, based on the conditions known to it, certain grants of public aid are not covered by the relevant provisions and that, accordingly, there are no grounds for issuing an order. The DCCA may lay down further rules on notification, including rules on the use of special notification forms.

The EU Commission Directive 2006/111/EC of November 16, 2006, on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, was implemented in Denmark in 2008.[37] Under the Directive, the EU Member States must ensure that financial relations between public authorities and public undertakings are transparent as provided for in the Directive, so that the following emerge clearly:

[33] Competition Act, Sec. 10a.
[34] Competition Act, Sec. 10a.5.
[35] Competition Act, Sec. 11.3.
[36] Competition Act, Sec. 11a.
[37] Competition Act, Sec. 11c.

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(i) Public funds made available directly by public authorities to the public undertakings concerned;

(ii) Public funds made available by public authorities through the intermediary of public undertakings or financial institutions; and

(iii) The use to which these public funds are actually put.

(7) Appeals

Any decision made by the DCCA may be appealed to the Danish Competition Appeals Board.[38]

b. Mergers

Chapter 4 of the Competition Act applies to a merger:

(i) Where the aggregate annual turnover in Denmark of all the undertakings concerned is at least DKK 900 million and the aggregate turnover in Denmark of at least two of the undertakings concerned is at least DKK 100 million each;

(ii) Where the aggregate annual turnover in Denmark of at least one of the undertakings concerned is at least DKK 3.8 billion and the aggregate worldwide turnover of at least one of the other undertakings concerned is at least DKK 3.8 billion; or

(iii) Between two or more commercial providers of electronic communications networks that the Danish Business Authority has referred to the DCCA, in accordance with the Act on Electronic Communication Networks and Services.[39]

Guidelines concerning the calculation of turnover may be found in Executive Order No. 1286 of November 26, 2019.

The DCCA must be notified of a merger that falls within the scope of the Competition Act after a merger agreement has been concluded, a takeover bid has been published or a controlling interest has been acquired and before the merger is carried out. The DCCA decides whether the merger will be approved or prohibited.[40]

A merger is deemed to take place when:

(i) Two or more previously independent undertakings merge into one undertaking; or

(ii) One or more persons that already control at least one undertaking, or one or more undertakings — by an agreement to purchase shares or assets or by any other means — acquire direct or indirect control of the whole or parts of one or more other undertakings.

The establishment of a joint venture performing on a permanent basis all the functions of an independent economic entity constitutes a merger within the meaning of (ii).[41]

When deciding whether a joint venture constitutes a merger within the meaning of the Competition Act, the DCCA will take into consideration whether:

(i) Two or more of the founding undertakings retain significant activities in the same market as the established joint venture or in a market that is downstream or upstream from that of the joint venture or in a market closely related to this market; and

(ii) The coordination that is the direct consequence of the establishment of the joint venture in question makes it possible for the undertakings involved to eliminate competition with respect to a substantial part of the products or services in question.

For purposes of the Competition Act, control is obtained through rights, contracts or any other means that, either separately or in combination, make it possible to exert a decisive influence on the operations of the undertaking.

The Competition Act further stipulates that a merger is not deemed to occur where:

(i) Credit institutions or other financial institutions or insurance companies, whose normal activities include transactions and dealing in securities for their own account or for the account of others are temporarily in possession of interests that they have acquired in an undertaking with a view to reselling these, provided they: do not exercise voting rights with respect to those securities for purposes of determining the competitive conduct of that undertaking; or exercise such voting rights exclusively with the aim of preparing the disposal of all or part of that undertaking or of its assets or shares held, and the disposal takes place within one year of the date of acquisition;

(ii) Control is acquired by a professional (for example, a bankruptcy trustee) who has powers under current insolvency legislation to deal with and dispose of the undertaking; or

(iii) The transactions are carried out by holding companies as defined in the Annual Accounts Directive, subject to the restriction, however, that the voting rights attached to the shares in their possession, especially in relation to the appointment of members of the management and supervisory bodies of the undertakings in which the shares are held, are only exercised to retain the full value of these investments and not to determine, directly or indirectly, the competitive conduct of these undertakings.

The DCCA's merger unit must be notified of any merger, takeover, or amalgamation of businesses As of July 1, 2020, Executive order No. 690 of May 25, 2020, specifies the information to be provided and prescribes certain templates to be used when filing the required information.

Depending on the state aid scheme, companies may be required to report information to the DTA if they receive state aid exceeding 100,000 euros per aid scheme. Companies that have received aid during the period from January 1 to December 31 must report the aid between August 1 and August 31 of the following year.[42]

Depending on the state aid scheme, companies may be required to report information to the DTA if they receive state aid exceeding 100,000 euros per aid scheme. Companies that have

[38] Competition Act, Sec. 19.

[39] Act No. 128 of February 7, 2014, on electronic communication networks and services.

[40] Competition Act, Sec. 12c.

[41] Competition Act, Sec. 12a.2.

[42] Executive Order No. 578/2024.

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received aid during the calendar year must report the aid between August 1 and August 31 of the following year.[43]

c. Price Controls

No price freezes have been in force since October 1998.

d. Securities Regulation

The securities market is governed by Act No. 377 of April 2, 2020 concerning capital markets (*Lov om kapitalmarkeder*), as amended.

The monopoly previously enjoyed by the Copenhagen Stock Exchange (NASDAQ OMX Copenhagen) does not exist under the Act, but the Copenhagen Stock Exchange remains the sole exchange in Denmark for listed securities.

The Act applies to actors and conduct on the capital markets, including traders in securities, brokers, multilateral trading facilities, depository and clearing centers, etc. The following securities are covered by the Act:

(i) Negotiable securities (except for payment instruments) that may be traded on the capital markets, including

- Shares in companies and other securities equivalent to shares in companies, partnerships and other businesses, and share certificates;
- Bonds and other securities equivalent to bonds;
- Any other securities whereby the securities referred to above may be acquired or sold, or give rise to a cash settlement, which amount is determined by reference to securities, currencies, interest rates or returns, commodities indices, and other indices and targets;

(ii) Money market instruments, including treasury bills, certificates of deposit and commercial paper, with the exception of payment instruments;

(iii) Holdings in collective investment schemes;

(iv) Options, financial-futures contracts and similar instruments, swaps, forward interest-rate agreements (FRAs), and any other derivative agreements concerning securities, currencies, interest rates or returns, or other derivatives, financial indices or financial targets that can be the subject of physical or cash settlement;

(v) Options, futures, swaps, FRAs, and any other derivative agreements concerning commodities for cash settlement, or that can be settled in cash if one of the parties so wishes (for other reasons than breach or termination);

(vi) Options, futures, swaps, and any other derivative agreements concerning commodities for physical settlement, if traded on a regulated market, a multilateral trading facility or an organized trading facility (except for certain energy products that are not cash settled);

(vii) Options, futures, swaps, forward contracts or any other derivative agreement concerning commodities that are not covered by (vi), can be physically settled, have no commercial purpose, and have characteristics similar to other derivative financial instruments;

(viii) Credit derivatives;

(ix) Financial contracts for difference (CDFs);

(x) Options, futures, swaps, FRAs and any other derivative agreements regarding climatic variables, freight rates, emissions permits or inflation rates, or other official financial statistics for cash settlement, or that can be settled in cash if one of the parties so wishes (for other reasons than breach or termination) and any other derivative agreements concerning assets, rights, obligations, indices and targets not covered by (i) to (ix) and (xi) that have characteristics similar to other derivative financial instruments, taking into consideration whether they are traded on a regulated market or through a multilateral or organized trading facility; and

(xi) Emission quotas.

The Act contains provisions concerning, for example, dealing in securities, requirements as to prospectuses in connection with new offerings, insider trading, offers in connection with takeovers and notification to the Copenhagen Stock Exchange if a shareholder owns more than 5% of the share capital in a company. The Act also contains provisions concerning computerized dealings and the computerized registration of securities.

The rules on prospectuses when securities are offered to the public or admitted to trading on a regulated market are laid down in Regulation (EU) 2017/1129 of the European Parliament and of the Council of June 14, 2017. The regulation applies from July 21, 2019 and is directly applicable in all EU Member States. The regulation is therefore also applicable in Denmark in its entirety. Generally, an approved prospectus must be published when admission to trading on a regulated market is sought or an offer is made to the public with respect to securities with a value of more than 8 million euros.

3. Intellectual Property

a. Patents

The Patent Act[44] sets out the requirements that must be met to obtain patent protection. Under the Act, it is possible to obtain patent protection if the invention concerned can be used for industrial purposes and can be considered to be a novelty when a comparison is made with what was known at the date the patent application was filed. If a patent is granted, the invention will be protected for 20 years from the date on which the patent application was filed. Nonpayment of an annual fee to the Danish authorities may result in the termination of protection under the Act and a registered patent may be cancelled pursuant to a judgment.

Nonresidents are not required to appoint an attorney in Denmark to register a patent, but the Danish Patent and Trademark Office can encourage the trademark holder to appoint an agent resident in the European Union or the EEA.[45]

Denmark has entered into a number of patent treaties and has ratified the Patent Cooperation Treaty (PCT), which was signed in Washington, D.C. on June 9, 1970. This convention

[43] Executive Order No. 578/2024.

[44] Act No. 90 of January 29, 2019, the Patent Act (*Patentlov*), as amended.

[45] Patent Act, Sec. 66.

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provides for a simplified procedure for patent applications in a number of countries.

Denmark has also entered into the Global Patent Prosecution Highway (GPPH) Program, which also includes Australia, Austria, Canada, Estonia, Finland, Germany, Hungary, Iceland, New Zealand, Japan, South Korea, Norway, Poland, Portugal, Russia, Singapore, Spain, Colombia, Sweden, the United Kingdom, the Unites States and the Visegrad Patent Institute. In addition, Patent Prosecution Highway Agreements (PPHs) have been concluded with Argentina, Brazil and China.

Following its entry into the European Union in 1972, Denmark signed the European Patent Convention (EPC) in 1973. Denmark has ratified the EPC, which enables an applicant for a patent to obtain patent protection in all the signatory countries based on a single European application to the European Patent Office.

In accordance with Act No. 551 of June 2, 2014, after a referendum, Denmark may ratify the Agreement on a Unified Patent Court.[46] The agreement seeks to establish a court that will have exclusive jurisdiction over all European patents.

b. Trademarks and Trade Names

The conditions for the protection of trademarks, signs, labels and packages are governed by the Trademark Act.[47] The Act provides for the protection of both registered and unregistered trademarks. A trademark may be registered if it is unique or is distinguishable from other trademarks in a material manner. Before registering a trademark, the Trademarks Register will examine whether the applicant meets the requirements of the law.

A trademark is registered for a 10-year period and registration may be renewed every 10 years. If a trademark has not been used for a period of five years, the registration may be cancelled. A foreign individual or corporation wishing to register a trademark in Denmark does not have to appoint a Danish attorney, but the Danish Patent and Trademark Office can encourage the trademark holder to appoint an agent resident in the European Union or the EEA.

Regulation (EU) 2017/1001 of the European Parliament and of the Council of June 14, 2017, on the European Union Trademark applies in Denmark.

c. Industrial Designs

Act No. 89 of January 29, 2019 (as amended), on Industrial Designs defines an industrial design as the pattern for the layout of a particular product or ornament. Protection under the Act is granted only if the design is significantly different from designs known at the time the application for protection is filed. Protection lasts for five years, but it is possible to renew the registration for another two five-year periods.

d. Copyrights

Under Act No. 1144 of October 23, 2014 (as amended), the author of a literary or scientific work has a civil right to his or her creation. The protection under the Act runs for 70 years after the death of the author.

The following EU Directives have all been implemented into Danish law by the Copyright Act:

(i) Council Directive 91/250/EEC of May 14, 1991, on the legal protection of computer programs;

(ii) Council Directive 92/100/EEC of November 19, 1992, on rental right and lending right and on certain rights related to copyright in the field of intellectual property;

(iii) Council Directive 93/83/EEC of September 27, 1993, on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission;

(iv) Council Directive 93/98/EEC of October 29, 1993, harmonizing the term of protection of copyright and certain related rights;

(v) Directive 96/9/EC of the European Parliament and of the Council of March 11, 1996, on the legal protection of databases;

(vi) Directive 2001/29/EC of the European Parliament and of the Council of May 22, 2001, on the harmonization of certain aspects of copyright and related rights in the information society (the “InfoSoc Directive”);

(vii) Directive 2001/84/EC of the European Parliament and of the Council of September 27, 2001, on the resale right for the benefit of the author of an original work of art;

(viii) Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004, on the enforcement of intellectual property rights;

(ix) Directive 2006/123/EC of the European Parliament and the Council of December 12, 2006, on services in the internal market;

(x) Directive 2007/65/EC of the European Parliament and the Council of December 11, 2007, amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities;

(xi) Directive 2011/77/EU of the European Parliament and the Council of September 27, 2011, amending Directive 2006/11 6/EC on the term of protection of copyright and certain related rights;

(xii) Directive 2012/28/EU of the European Parliament and the Council of October 25, 2012, on certain permitted uses of orphan works;

(xiii) Directive 2014/26/EU of the European Parliament and of the Council of February 26, 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market; and

(xiv) Directive (EU) 2017/1564 of the European Parliament and of the Council of September 13, 2017 on certain permitted uses of certain works and other subject matter

[46] 2013/C 175/01 (June 20, 2013).

[47] Act No. 88 of January 29, 2019, the Trademark Act (*Varemærkelov*), as amended.

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protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society.

Creditors can neither force an author to publish a work nor attach an unpublished work. The right to a work is inherited by the successors of its creator.

4. *Special Economic Zones*

There are no special economic zones in Denmark.

D. Immigration Regulations

Before they arrive in Denmark, nationals of countries outside the European Union, the EEA and Scandinavia intending to work and reside in Denmark must apply for work and residence permits. An immigrant may encounter difficulties in obtaining such a permit unless it can be established that the immigrant will not take up employment in an area with high unemployment.

Under EU provisions, nationals of other EU Member States may take up residence in Denmark for a period of up to three months or, if they are seeking employment, for a period of up to six months. If employment is found, no work permit is necessary, but a residence permit must be obtained. The granting of such permits is a matter of routine.

When processing an application from workers from outside the European Union/EEA, the Danish Immigration Service will, in particular, take into consideration:

(i) Whether there are available professionals residing in Denmark or the European Union/EEA who are qualified for the job in question (this applies only to certain types of application);

(ii) Whether the nature of the job in question is specialized enough to warrant the granting of a residence and work permit. Generally, work permits will not be granted to fill ordinary skilled-labor vacancies, such as for carpenters or bricklayers, or unskilled positions, such as for pizza makers, delivery people and cleaners.

Regardless of the particular circumstances, a written employment contract or job offer specifying salary and employment conditions must be submitted to the Immigration Service. Salary and employment conditions must correspond to Danish standards. In addition, the employer must be registered in compliance with the Danish Tax at Source Act for income tax purposes.

Nationals of the Nordic countries are free to enter Denmark without any work or residence permit.

Individuals taking up residence in Denmark must register with the local authorities (*Folkeregisteret*) in the municipality in which they intend to reside. Such registration is automatically reported to the DTA.

To buy a house or an apartment in Denmark, it is generally necessary for foreign citizens (and companies) to obtain a permit from the Danish Ministry of Justice. If the buyer has had permanent residence in Denmark for at least five years, no permit is required. No permission is necessary for citizens of EU Member States if the purchase is made in connection with employment in Denmark. Citizens of both EU Member States and non-EU countries must apply for permission to acquire a summer cottage.

E. Labor Relations

The labor force in Denmark is approximately 2.9 million, of whom about 1.4 million are women. The labor force is well trained and educated. Education and training are adapted to the needs of changing technology.

A significant number of Danish employees are members of trade unions. Every two years, the Danish Employers Confederation and the Danish Federation of Trade Unions enter into agreements concerning wages and working hours for the following two years. The agreements also set forth terms and conditions concerning notice of termination and rules for resolving disputes. Some employees are covered by the Danish Employees Act (*Funktionœloven*). Contracts with salaried employees may only be terminated by giving proper notice ranging from one to six months, according to the length of employment. Every employee whose weekly working hours exceed eight is entitled to a written employment contract. If no contract is signed or the contract does not meet the requirements of the law, the employee may claim compensation of an amount of up to 13 weeks' salary. In the case of material deficiencies, compensation of up to 20 weeks' salary may be granted.

In the case of the transfer of a business, notification must be given to the employees in accordance with Council Directive 2001/23/EC of March 12, 2001, as amended, on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of businesses, which was implemented into Danish law by Act No. 710 of August 20, 2002.

Under the Holiday Act, Act No. 1025 of October 4, 2019, salaried employees accrue a right to 2.08 days of paid holiday per month of employment and are entitled to at least 25 days of holiday per year. If the notice of termination for an employee is one month or longer, the employee is generally entitled to the normal salary during the paid holidays. Other employees receive compensation equivalent to 12.5% of the salary received.

Both Directive 2006/54/EC of the European Parliament and of the Council of July 5, 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, as well as Council Directive 92/85/EEC of October 19, 1992, as amended, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, have been implemented into Danish law. Compensation for violating the rights under these Directives may be as high as an amount equal to nine months' salary, and in special cases, 12 months' salary.

Under the Companies Act, employees have the right to elect employees' representatives to the board of directors of a company if the company has employed an average of 35 employees or more for the preceding three years. The employees may elect one-half of the members of the board besides the members elected by the shareholders. If the company is a holding company, the employees have the right to elect at least three board members. For this purpose, a holding company is defined as a company controlling more than 50% of the votes of another company.

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There is no mandatory profit sharing in Denmark. However, under the Danish Tax Assessment Act, certain limited but favorable stock option schemes may be set up. For further details, refer to V.B.3.e., below. Incentive schemes for the management and board of directors of listed companies must be approved by the shareholders.

F. Financing the Business

In Denmark, all banks are commercial banks. The banks mainly grant loans to finance business operation, and short-term loans are usually granted as an overdraft facility. Mortgage associations and banks provide long-term financing.

Discounting of bills of exchange and other types of credit facilities are also available through the banking system.

Danish banks and savings institutions provide currency loans from foreign banks. For more details regarding the rules on such loans, see B., above.

The Danish real estate mortgage system is generally considered to be transparent, stable and inexpensive. The acquisition of real estate and the construction of buildings is therefore usually primarily (60–80%) financed via loans from mortgage institutions. The repayment period varies from 10 to 30 years depending on the purpose of the loan and the type of building. The repayment may, on certain mortgages, be suspended for a period of up to 10 years, during which only interest on the mortgage is payable.

As of November 1, 2015, individuals acquiring real property must have readily available funds equivalent to 5% of the market price of the property in question. The balance may be financed by loans from a mortgage institution or bank.

Individuals (both Danish and non-Danish) who wish to purchase and own ships for business purposes may use the Danish Ship Finance A/S, a ship finance institute that finances ships against a first mortgage. Additionally, other ways of financing exist, such as leasing or floating shares on the Danish Stock Exchange.

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III. Forms of Doing Business in Denmark

A. *Principal Business Entities*

1. Sole Proprietorships

The main characteristic of a sole proprietorship is that all the assets of the business are owned by one person who is solely liable for all the debts of the business. With few exceptions (generally, in the banking and financial sector), most kinds of business may be conducted by an individual in Denmark, although certain requirements as to education may need to be met.

The activities of a sole proprietorship may be subject to the Act on Commercial Business Entities (see 3., below).

2. Joint Stock Corporations

In Denmark, there are two kinds of joint stock corporations: the public limited company (*Aktieselskab* or A/S) and the private limited company (*Anpartsselskab* or ApS).

All joint stock corporations are governed by the Companies Act (*Selskabsloven*), which came into force on March 1, 2010. Under Danish law, a corporation is a separate legal entity and its shareholders are not liable for its debts. The shareholders are only required to pay in the capital for which they have subscribed. The minimum capital of an A/S is DKK 400,000,[48] of which 25% or DKK 100,000[49] must be paid up at the time of incorporation. If shares are subscribed for at a premium, the premium must be paid up, even if only 25% of the share capital is paid up. If assets are contributed in kind or in kind and in cash, the entire amount of DKK 100,000 must be contributed on formation. The minimum capital of an ApS is DKK 40,000, which must be paid up at the time of incorporation.[50] The share capital of an A/S or ApS may be denominated in Danish kroner or euro,[51] whereas the share capital of an IVS had to be denominated in Danish kroner. The Danish Business Authority may issue regulations concerning the denomination of share capital in other currencies.

3. Partnerships

a. General and Limited Partnerships

There are no statutory provisions as to the formation of a partnership but, if the object of the partnership is to promote the economic interest of the participants through commercial activities, certain formal requirements stipulated in the Act on Commercial Business Entities must be met.[52] This Act applies to sole proprietorships, partnerships, limited partnerships, cooperatives and other companies and associations with liability that are not subject to the Companies Act or the Act on Commercial Foundations.[53] A business entity is deemed to carry on commercial activities if it:[54]

(i) Sells goods or intellectual property (IP);

(ii) Provides services or the like in return for consideration;

(iii) Conducts business by selling or letting real property;

(iv) Is considered to be a holding entity of a public limited company or a private limited company; or

(v) Can exercise control of another entity through articles of association or an agreement and has a significant share in that entity's capital without, however, being considered a holding company referred to in (iv) of that other entity.

The Act on Commercial Businesses contains a definition of a general partnership (*Interessentskab* or I/S) and a limited partnership (*Kommanditselskab* or K/S).

An I/S is a partnership in which the partners carry on their trade or business for the joint benefit and profit of the partners concerned, whether or not the contributions to the partnership are equal. The partners are personally and severally liable for the debts of the partnership. The creditors of the partnership have a preferential claim on the assets of the partnership.[55]

A K/S is a partnership consisting of one or more general partners (*komplementar(er)*), normally A/Ss or ApSs, that are jointly and severally liable for the debts of the partnership, and one or more limited partners (*kommanditist(er)*) that generally contribute in cash payments a specific sum as capital of the limited partnership and that are not liable for the debts of the partnership beyond the part of the partnership to which they subscribe.[56] Individuals, including foreigners, may be either general or limited partners.

The Act on Commercial Business Entities also contains provisions regarding businesses with limited liability and cooperatives. A business with limited liability is defined as a business for whose obligations none of the participants is personally and jointly liable.[57] A cooperative is defined as an entity, the object of which is to promote the common interests of the participants through their participation in the business as purchasers, suppliers or the like, where the profits of the business are distributed among the members in proportion to their business turnover or are accumulated.[58]

The Act on Commercial Business Entities contains requirements as to the name of a business. Under Chapter 3 of the Act, any business with limited liability must be registered with the Danish Business Authority.[59] Registration with the Danish Business Authority is a condition precedent to the entity being recognized as a separate legal entity. Liabilities incurred prior to registration remain liabilities of the founders if the entity is not registered with the Business Authority. On registration, such liability is transferred under the Act to the entity in question.[60]

The Danish Business Authority maintains a register of businesses registered under the Act. Notification of the forma-

[48] CA, Sec. 4.2.
[49] CA, Sec. 33.
[50] CA, Sec. 4.2.
[51] CA, Sec. 4.1.
[52] Act No. 659 of July 1, 2019, the Act on Commercial Business Entities (*Lov om erhvervsdrivende virksomheder*).
[53] Act on Commercial Business Entities, Sec. 1.2.
[54] Act on Commercial Business Entities, Sec. 1.4.
[55] Act on Commercial Business Entities, Sec. 2.1.
[56] Act on Commercial Business Entities, Sec. 2.2.
[57] Act on Commercial Business Entities, Sec. 3.
[58] Act on Commercial Business Entities, Sec. 4.
[59] Act on Commercial Business Entities, Sec. 8.
[60] Act on Commercial Business Entities, Secs. 9.1 and 9.2.

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tion of an entity must be filed two weeks after formation, at the latest.[61] Entities subject to the Act on Commercial Business Entities must draw up annual accounts in accordance with the Act on Annual Accounts.[62]

Entities meeting the following three requirements may choose not to draw up annual accounts, i.e., entities whose: (i) "net balance" does not exceed DKK 7 million; (ii) net turnover does not exceed DKK 14 million; and (iii) average number of full-time employees during the accounting year does not exceed 10.[63] The amount of DKK 7 million comprises the total of all assets or the total of capital assets and current assets determined in accordance with the Act on Annual Accounts. If an entity has elected not to draw up annual accounts, the entity must file a special statement with the Business Authority in accordance with Section 145 of the Act on Annual Accounts in which the management states that the entity has utilized the exception not to draw up annual accounts and that the management warrants that the requirements for utilizing the exception are met. Unlimited and limited partnerships that are part of a group of companies for which consolidated accounts are filed may also choose to file special statements instead of drawing up annual accounts.[64]

Businesses with limited liability, I/Ss and K/Ss and other entities subject to the Act on Commercial Business Entities, save for sole proprietorships, are required to obtain and maintain information about their ultimate beneficial owners and are required to register such information with the Danish Business Authority. Similar provisions apply to joint stock companies. For a more detailed description of the requirements regarding registration of ultimate beneficial owners, see III.B.1.d., below.

b. Partnership Limited by Shares

A partnership limited by shares (*kommanditaktieselskab* or P/S) shares a number of traits with a K/S. A P/S is a partnership consisting of one or more general partners (*komplementar(er)*) that are jointly and severally liable for the debts of the partnership, and one or more limited partners or shareholders that subscribe to the share capital of the partnership and are not liable for the debts of the partnership in excess of the subscription amounts.[65] Individuals, including foreigners, may be either general or limited partners.

A P/S is governed by the Companies Act and is subject to the same rules as an A/S with the necessary modifications.[66] For a more detailed description of the rules regarding A/Ss, see III.A.2., above.

4. Branch of a Foreign Corporation

A foreign corporation may conduct business in Denmark through a branch.[67] To set up a branch, a foreign corporation must apply for permission from the Business Authority,[68] unless the foreign corporation is incorporated in another European Union (EU) Member State or European Economic Area (EEA) country. Denmark has entered into bilateral agreements with the United States and Australia entitling U.S. and Australian companies to set up branches without prior permission. Generally, permission will be granted if Danish companies are allowed to conduct business in the country concerned through a branch.

A foreign company is fully liable for the debts incurred by its branch. The branch is not treated as an independent entity for Danish corporate law purposes.

A resident branch manager is personally liable for withholding tax on payments to any Danish employees of the branch if the foreign corporation is established outside the European Union and Denmark has not concluded an agreement concerning mutual assistance in connection with exchange of information and collection in accordance with the rules applicable within the European Union.[69] If the branch manager is not a resident of Denmark, a paying agent residing in Denmark must be appointed. Similar rules apply with regard to the payment of Danish corporate taxes payable by the branch and value added tax (VAT).[70] The branch manager is generally jointly liable together with the foreign company for the payment of corporate income taxes and VAT where the branch is a branch of a non-EU company.

A branch of a foreign corporation must be registered with the Danish Business Authority.[71]

5. Cooperatives

It is possible to conduct business through a cooperative, which may be a sales, purchase or production cooperative. There are no statutory requirements as to the organization of such an entity. The organization may be arranged in various ways, but in most cases a society with limited liability is formed limiting the liability of the members to the capital injected. However, joint and separate liability may be provided for in the articles of association if necessary. No minimum capital is required to establish a sales, purchase or production cooperative.

A cooperative is a separate legal entity.[72] However, a legal entity will only qualify for cooperative treatment if its objective is cooperative. A cooperative objective may be described as engaging in purchasing, improving, and selling products of the paying members, who must be economically independent parties.

B. Joint Stock Companies

Danish corporate law is governed by the Companies Act.

1. Formation

a. Registration

A request to register a corporation is filed on a special form or registration may be completed online via a special

[61] Act on Commercial Business Entities, Sec. 10.1.
[62] Act on Commercial Business Entities, Sec. 18.
[63] AA, Sec. 4.
[64] AA, Secs. 4 and 5.
[65] Act on Commercial Business Entities, Sec. 2.2.
[66] CA, Sec. 358.
[67] CA, Sec. 345.1.
[68] CA, Sec. 345.2.

[69] Consolidated Act No. 117 of January 29, 2016, the Tax at Source Act (*Kildeskatteloven* or TSA), as amended, Sec. 46.4.
[70] VATA, Secs. 47.2 and 46.
[71] CA, Sec. 349.
[72] See Act No. 1726 of December 27, 2018, Corporate Tax Act (*Selskabsskatteloven* or CTA), Sec. 1 (1.3–6), for tax liability.

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website (https://indberet.virk.dk/myndigheder/stat/ERST/Start_company). The following documents must be submitted in connection with the request no later than two weeks after the signing of the articles of incorporation:[73]

(i) The articles (corporate charter), together with the by-laws;

(ii) A record showing the amount of contributed capital, the amount subscribed for that capital, by what means payment was made and the time by which full payment is due; and

(iii) The names, functions and addresses of the company's founders, members of the board of directors or the managing director, and the statutory accountants.

The Danish Business Authority has the authority to scrutinize incorporation procedures and to assess whether the prerequisites of the law are complied with. If incorporation has not been concluded in accordance with the law, registration may be denied.[74]

If the by-laws or other documents do not meet the legal requirements, the registrar may also choose to grant the company a limited period in which to amend the incorporation procedure in such a way that the legal requirements are met.[75] This is the usual procedure followed by the Danish Business Authority.

As previously noted, an A/S and an ApS are separate legal entities whose shareholders are not liable for their debts beyond the amount for which they have subscribed. The minimum share capital of an A/S is DKK 400,000, of which at least 25% must be paid up on incorporation, and of an ApS DKK 40,000, which must be paid up in full.[76] Prior to online registration, the share capital must be paid into an account with a bank or the client account of a lawyer. The bank or the lawyer then confirms by means of an electronic signature to the Danish Business Authority that the necessary funds are available at the time of formation and registration. An A/S or an ApS may be formed by only one founder (either a natural or a legal person). There are no requirements as to the citizenship or residence of a founder, board member or manager of an A/S or an ApS; however, a founder may not be subject to restructuring or bankruptcy proceedings.

The founders may call the first general meeting of a company at which a resolution on the formation of the company should be passed but, according to the Companies Act, the signing of relevant documents will suffice.[77] If all the shares are subscribed for at the general meeting and all approved shareholders agree, the resolution on the formation of the company may be passed without prior notice having been given.

The board of directors must apply for the registration of a company with the Danish Business Authority no later than two weeks after the day of formation. The entire registration procedure is completed online, and registration takes place instantly, after which the company is furnished with a company and tax registration (CVR) number, which is used for tax and VAT purposes as well as other purposes.

A company's registration is a necessary prerequisite for its existence as a legally recognized entity. Until the company is duly registered with the Danish Business Authority, the founders are personally liable for the company's legal and financial transactions, and the company may not appear in court, except with regard to issues concerning registration.[78]

As of January 1, 2014, it is possible to move the corporate seat of a Danish company to another EU Member State or EEA country provided the corporate law of that Member State or country provides for employee representation on the board of directors that is no less favorable than under Danish law.[79] Under Section 140 of the Danish Companies Act, the employees are entitled to elect representatives to a company's board of directors if, over the previous three years, the company has had an average of more than 35 employees. In these circumstances, the employees may elect at least two and up to one-half the number of representatives elected by the shareholders.

b. Articles of Incorporation

The articles of incorporation of an A/S or an ApS must contain:[80]

(i) The name and address of each of the incorporators and, if an incorporator is a Danish company, its CVR number.

(ii) The subscription prices for the share capital.

(iii) The time limits for the subscription of and paying up of the shares.

(iv) The effective date of incorporation, which is the date the articles of incorporation are signed.[81] The effective date of incorporation may be postponed by up to 12 months after the date the articles of incorporation are signed, if the share capital is contributed in cash.[82] If the share capital is contributed in kind, the date of submission for registration or the date of registration may be chosen as the effective date.[83] If a business is taken over in connection with the formation, the effective date may, for accounting purposes, be the first day of the accounting year of the business taken over.[84] The same rule applies if a controlling interest in another company is acquired in connection with the formation. A controlling interest is defined as a holding of more than 50% of the votes in the other company.[85]

(v) The effective date for accounting purposes.

(vi) A statement as to whether the company will pay the costs in connection with formation and, if so, a specification of those costs. It is not required that the costs be paid up as additional share capital or as a premium on the shares subscribed for.

[73] CA, Sec. 40.
[74] CA, Sec. 15.
[75] CA, Sec. 16.
[76] CA, Sec. 4.
[77] CA, Sec. 25.
[78] CA, Sec. 41.
[79] CA, Sec. 318 a.
[80] CA, Sec. 26.
[81] CA, Sec. 40.3.
[82] CA, Sec. 40.4.
[83] CA, Sec. 40.5.
[84] CA, Sec. 40.6.
[85] CA, Sec. 7.

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(vii) A draft of the by-laws.

The articles of incorporation must contain information on the following additional matters, if applicable:[86]

(i) Any preferential rights conferred on the incorporators or other persons;

(ii) Any agreements between the company and the incorporators or other persons under which the company takes on significant economic obligations;

(iii) The payment of shares subscribed for by contributions in kind;

(iv) An election made in accordance with the Act on Annual Accounts not to have the accounts of the company audited; and

(v) The amount of the share capital paid up at the time of formation.

c. By-Laws

The by-laws of a company must state:[87]

(i) The name of the company and any auxiliary names.

(ii) The object of the company.

(iii) The nominal amount of the share capital, and the number of shares and their face value.

(iv) The rights attaching to the shares, whether the shares will be registered or bearer shares, whether the shares will be nonnegotiable, whether certain shares will enjoy preferential rights including different voting rights, and whether the shares may be redeemed.

(v) The organizational management structure of the company. In the case of an A/S, this is a two-tier structure. The superior body of an A/S is either the board of directors or a control organ that appoints one or more managers who are in charge of the day-to-day business of the company. (For further details, see 2.h., below.) In the case of an ApS, only a manager needs to be appointed, but an ApS may opt for a two-tier structure. Two terms were introduced by the Companies Act: “central management organ” and “superior control organ.” The former is: the board of directors if such a board is elected; the manager, in the case of a company that only has a manager; or the manager, if a control organ and a manager are appointed.[88] The latter is: the board of directors, if such a board is appointed; the manager in the case of a company that only has a manager; and the control organ, in the case of a company that has both a control organ and a manager.[89]

(vi) Notice of the annual general meeting.

(vii) The accounting year.

The by-laws must also state the rules for the following issues if a relevant decision has been adopted by the shareholders:

(i) The issuing of warrants and convertible loans;

(ii) Rules concerning the keeping and maintenance of the shareholders’ registry and its availability to the shareholders;

(iii) Provisions allowing for noncompliance with the rules set out in the Companies Act concerning the content and length of the notice to be given when an ordinary or extraordinary general meetings is called;

(iv) Rules for holding general meetings electronically without the shareholders being physically present;

(v) The obligation of the shareholders to have their shares redeemed, fully or in part, by the company or others; and

(vi) Restrictions on the transferability of shares.

d. Shares

A company may issue either registered or bearer shares; share certificates need not be issued.[90] All shares carry equal voting and economic rights, but the articles of association may provide for different share classes differentiating the shares’ voting and economic rights.

The central management organ must establish and maintain a register (*Ejerbog*) of all a company’s shares. The register must be established immediately after the formation of the company. The register may be kept in the electronic data system of the Danish Business Authority but may also be kept by the company itself or a third person. The register must be available for inspection by public authorities and must be maintained within the European Union/EEA.[91] If the employees are entitled to elect labor representatives to the superior control organ but have not exercised their right to do so, the register must be available for inspection by a representative of the employees. The by-laws may provide for the register to be available to the shareholders. The shareholders of an ApS have unrestricted access to the register. In the case of registered shares, the shareholders’ register must contain the following information:[92]

(i) The shareholders’ aggregate shareholdings;

(ii) The name, address and CVR number, if applicable, of each of the shareholders;

(iii) The date of acquisition, disposal or creation of a legal charge, including the denomination of the shares; and

(iv) The voting rights attaching to the shares.

The register may be kept electronically.[93]

A company must be notified by any person acquiring a significant shareholding in the company, i.e. a shareholding to which at least 5% of the share capital’s voting rights are assigned, or the nominal value of which amounts to at least 5% of the share capital.[94] Further, notification is required of any changes as a result of which the threshold of 5, 10, 15, 20, 25, 50, 90 or 100% is exceeded, or the threshold of control of one-third or two-third of the votes or share capital is either met or

[86] CA, Sec. 27.
[87] CA, Sec. 28.
[88] CA, Sec. 5.4.
[89] CA, Sec. 5.5.
[90] CA, Secs. 48 and 54.
[91] CA, Sec. 51.
[92] CA, Sec. 52.
[93] CA, Sec. 51.5.
[94] CA, Sec. 55.

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ceases to be met. Notification must be given at the latest two weeks after a change has occurred.[95] The notification must contain information on the date of acquisition or disposal, the number of shares concerned, the name and address of the shareholder concerned and, if the shareholder is a company, its registration number and place of domicile. Foreign shareholders must submit information that clearly identifies them.

The names of significant shareholders must be noted in a company's annual report. A significant shareholder is a shareholder that controls at least 5% of the votes or 5% of the nominal share capital, which must be at least DKK 100,000.[96]

Shareholders must also be registered in a public shareholders' register (*Ejerregister*).[97] The information registered in this register is open to the general public and is accessible online through the Danish Business Authority's IT system.

The following minimum information must be submitted on registration:[98]

(i) The total number of shares held by each shareholder;

(ii) The date for the acquisition or sale of the shares and, if the share capital is divided into classes, information about the class of shares acquired or sold;

(iii) The identity of the shareholders:

- The names, addresses and personal identification (CPR) numbers of Danish shareholders;
- The names, addresses, CVR numbers and registered offices of Danish companies;
- Identification numbers equivalent to CPRs or CVRs for, respectively, foreign individuals or legal persons. For an individual, a passport number or an equivalent ID number will suffice. A foreign legal entity may use a registration number issued by a foreign company registration authority or a taxpayer identification number (TIN) for purposes of registering in the public shareholders' registry. The documentation submitted must not be older than three months at the time of registration.

The EU money laundering directives[99] have been fully implemented in Denmark. According to the relevant legislation, a company is obliged to obtain and register information about its ultimate beneficial owners. The definition of an "ultimate beneficial owner" is set out in Article 3(6) of Directive (EU) 2015/849 and will be of importance in determining whether an ultimate owner will have to register its shareholding in a Danish company with the public shareholders' register.

An ultimate beneficial owner is defined as any natural person(s) who ultimately own(s) or control(s) the customer and/or a natural person(s) on whose behalf a transaction or activity is being conducted and includes, at least:

(i) In the case of a corporate entity:

- The natural person(s) who ultimately own(s) or control(s) the entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interests in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with EU law or subject to equivalent international standards that ensure adequate transparency of ownership information.

A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person is an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity that is under the control of one or more natural persons, or by multiple corporate entities that are under the control of the same natural person(s), is an indication of indirect ownership. This applies without prejudice to the right of EU Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, *inter alia*, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council.

- If, after having exhausted all possible means and provided there are no grounds for suspicion, no person under the above bullet is identified, or if there is any doubt that the person(s) identified are the ultimate beneficial owner(s), the natural person(s) who hold the position of senior managing official(s) will be considered the ultimate beneficial owners.

To identify the beneficial ownership under the above bullets, entities must keep records of actions taken.

(ii) In the case of a trust:

- The settlor;
- The trustee(s);
- The protector, if any;
- The beneficiaries or, where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; and
- Any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

(iii) In the case of a legal entity such as a foundation or a legal arrangement similar to a trust, the natural person(s) holding positions equivalent or similar to those referred to above in (ii).

Companies must register their ultimate beneficial owners with the Danish Business Authority as soon as possible after a company has discovered that a person has become a beneficial owner or after any change to an existing profile of an ultimate beneficial owner. The information is stored in a public register of beneficial ownership. Companies are also required to store

[95] CA, Sec. 56.
[96] AA, Sec. 104.
[97] CA, Sec. 58.
[98] CA, Sec. 56.2.
[99] Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of May 30, 2018.

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and retain this information for five years after a person has terminated their beneficial ownership interest.

e. Capital Stock

A company may not be registered unless the total number of the shares subscribed for under binding arrangements corresponding to 25% of the share capital specified in the by-laws has been paid up in full, including any share premium. In the case of an ApS, a minimum amount of DKK 40,000 must have been paid up. There is no required minimum number of shareholders. An A/S or an ApS may be owned by a single shareholder.

f. Costs of Incorporation

A registration fee of DKK 670 is payable on the registration of an A/S or an ApS if done online. Otherwise, the registration fee is DKK 2,150. A fee of DKK 180 is payable on registration of certain changes. Certain other registrations are free of charge. No capital duty is imposed.

2. Operation

a. License

Within certain professions, a company must obtain a license to conduct its business. For example, it is necessary for an A/S or an ApS to obtain a license to sell food products directly to consumers (including catering), to sell food products to restaurants, to sell food products to other businesses for purposes of resale or processing (wholesale), or to operate a company transporting, processing or conserving food products. A liquor license is required to serve alcohol in restaurants and at hotels. The requirement also applies to brokerage and certain other sales activities.

A company may not carry on business activities of the following without a license:

(i) A pharmacist;

(ii) An auction firm; or

(iii) An "averaging agent" (i.e., a person that, in the case of the total loss of a vessel, divides the loss between the vessel and the cargo).

b. Amendment of By-Laws

The by-laws of a company may be amended at a shareholders' meeting.[100] The shareholders may unanimously agree to adopt changes without observing the rules set out in the Companies Act concerning the form and notice period for convening shareholders' meetings.

Generally, a proposal to amend the by-laws must be approved at a meeting at which shareholders holding at least two-thirds of the capital with voting rights are present and two-thirds of the votes cast are in favor of the amendment. This quorum requirement also applies to capital increases, the adoption of changes in existing differences or the creation of new differences between share classes, and the issuing of bonds, profit-sharing bonds or convertible securities.[101]

[100] CA, Sec. 76.

[101] CA, Sec. 106.

A resolution that increases the shareholders' liability towards the company is only valid if it is approved by all the shareholders.[102]

Certain resolutions concerning amendments to the by-laws may only be passed if adopted by at least nine-tenth of both the votes cast and of the shares entitled to vote represented at the general meeting. This voting requirement applies to amendments as a result of which:

(i) The rights of the shareholders to receive dividends or distributions of the assets of the company, including subscription for new shares at a beneficial rate, are reduced to the benefit of someone other than a shareholder or an employee of the company or a subsidiary of the company;

(ii) The transferability of the shares is restricted by the adoption of provisions such as provisions requiring the approval of the company for a transfer of shares or provisions preventing shareholders from acquiring shares in excess of a certain portion of the share capital;

(iii) Obligations are imposed on the shareholders to accept redemption of their shareholdings equally without the complete dissolution of the company;

(iv) The shareholders' right to exercise the voting rights on their own shares or those of others is restricted to a specific number of votes or a certain percentage of the share capital entitled to vote;

(v) The shareholders, as part of a division of one company into two or more companies, do not receive voting shares in each of the receiving companies in proportion to their shareholdings in the company being divided;

(vi) The general meeting may be conducted in a language other than Danish, Swedish, Norwegian or English without a simultaneous translation into Danish being provided; or

(vii) A language other than Danish, Swedish, Norwegian or English is allowed to be used in the internal documents of the company and documents prepared for the general meeting.[103]

Shareholders voting against proposals to amend the by-laws in relation to matters listed at (i)–(iv), (vi) and (vii) in the preceding paragraph may require the company to redeem their shareholdings in the company. Such a request must be made in writing no later than four weeks after the date of the general meeting.[104] Shareholders may be required to state, prior to the general meeting, whether they wish to exercise their right of redemption and, in that case, the right may only be exercised if retained.[105] The redemption price, if not agreed to, is determined by an expert appointed by the court having jurisdiction over the domicile of the company.[106]

c. Capital Increase

A company's capital may be increased by way of subscription of new shares, conversion of the company's reserves into

[102] CA, Sec. 107.

[103] CA, Sec. 107.2.

[104] CA, Sec. 110.1.

[105] CA, Sec. 110.2.

[106] CA, Sec. 110.3.

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share capital by the issuance of bonus shares or by issuance of convertible debt instruments or warrants. A decision to reduce the capital of a company may only be taken in accordance with the quorum rules discussed in b., above.[107]

The general meeting may authorize the central management organ to increase the share capital by amending the by-laws to that effect, subject to certain formal conditions.[108] The resolution to increase the share capital by subscription of new shares must be in writing and the resolution must include information on the following items:[109]

(i) The minimum and maximum amount by which the share capital may be increased;

(ii) Whether partial payment is allowed;

(iii) The subscription price and the denomination or number of shares concerned;

(iv) The date from which the new shares confer the right to receive dividends and other rights in the company;

(v) The estimated expenses relating to the capital increase that are payable by the company;

(vi) The share class of the new shares if different share classes exist or will be introduced;

(vii) The pre-emption rights of the shareholders or others and any restrictions on the new shareholders' pre-emption rights in connection with future capital increases;

(viii) The time-limit for subscription and a time-limit of at least two weeks from the date of the notice to the shareholders within which the shareholders must exercise their pre-emption rights;

(ix) The time-limit for payment of the shares and, where the allotment is not left to the central management organ, the rules on allotment in the case of oversubscription of any shares not subscribed for by the exercise of pre-emption rights;

(x) Any restrictions on the transferability of the new shares or any obligation on the new shareholders to have their shares redeemed;

(xi) Whether the new shares are negotiable instruments; and

(xii) Whether the new shares will be registered shares or bearer shares.

New shares may also be subscribed for by contribution to the company of assets other than cash, provided a valuation report on the value of the assets is prepared by the company's auditor.[110]

A resolution to increase the share capital must be registered with the Danish Business Authority no later than two weeks after payment for the shares was made or the time-limit for making such payment expired.[111]

[107] CA, Sec. 154.2.
[108] CA, Sec. 155.
[109] CA, Sec. 158.
[110] CA, Sec. 160.
[111] CA, Sec. 173.

d. Capital Reduction

A decision to reduce the capital of a company may only be taken in accordance with the quorum rules discussed under b., above.[112] However, if the decision only affects a certain class of shares, a decision must normally be adopted by unanimous vote.

The proposal to reduce the capital must state the amount by which the share capital is to be reduced and to which of the following objects the proceeds of the reduction will be applied:[113]

(i) To cover losses sustained;

(ii) To be paid back to the shareholders; or

(iii) To be allocated to a special reserve.

The proceeds of the capital reduction cannot be applied for any other purpose. A capital reduction may be made to below par value if the proceeds are distributed to the shareholders or allocated to a special reserve.[114]

If the proceeds resulting from the capital reduction are to be paid back to the shareholders or deposited in a reserve at their disposal, the net assets of the company after the reduction must still meet the minimum requirements as to paid-up capital. Further, in connection with a capital reduction to be distributed to the shareholders or deposited in a reserve, the company's creditors must be required to file their claims against the company within a time-limit of four weeks.[115]

Under Section 179.2 of the Companies Act, the central management organ may be held responsible for making a distribution that may be detrimental to the company, its creditors or parties dealing with the company. The company must at all times maintain the reserves that may not be applied for distribution in accordance with the Companies Act and the by-laws of the company. Further, under Section 115.5 of the Companies Act, the central management organ is responsible for maintaining the necessary capital adequacy.

A resolution to reduce share capital must be registered with the Danish Business Authority no later than two weeks after the resolution has been passed.[116]

e. Stock Buybacks

A company may only acquire its own stock if the stock is fully paid up.[117] A company may only acquire its own stock for consideration[118] if the funds applied could have been distributed as an interim dividend distribution. The share capital of a company reduced by the holdings of its own stock may never be less than DKK 400,000 in the case of an A/S or DKK 40,000 in the case of an ApS. A company may only acquire its own stock if authorized to do so by the shareholders.[119] An authorization may be given for a period of five years and must state the maximum nominal value of the shares and the minimum and max-

[112] CA, Sec. 185.
[113] CA, Sec. 188.
[114] CA, Sec. 188.3.
[115] CA, Sec. 192.
[116] CA, Sec. 191.
[117] CA, Sec. 196.
[118] CA, Sec. 197.1.
[119] CA, Sec. 198.

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imum consideration that may be paid. Regardless of the rules described above, a company may acquire its own stock in connection with a capital reduction.[120]

f. Corporate Officers

An A/S must appoint at least one manager but may appoint more than one if this is provided for in its by-laws. An A/S may be established without the election of a board of directors, in which case a control organ must be appointed.[121] The main difference between the duties of the board of directors and the control organ is the responsibility of the board of directors to plan and carry out the strategic management of the company and to supervise management's running of the company in accordance with its by-laws and the Companies Act. The duties of the control organ are limited in so far as the organ is only responsible for supervising the management's running of the company in accordance with its by-laws and the Companies Act. The board of directors and the control organ must each have at least three members. The management must conduct the daily business of the company in accordance with the rules and instructions given to it by the board of directors or the control organ.[122] Decisions of an unusual nature or of material importance may only be adopted with special authority of the board of directors.[123]

No requirements apply as to the residence of a member of the board of directors or the control organ, or the manager.

An ApS must have one or more managers to be in charge of running the company. It is, however, also possible to have a board of directors elected by the general meeting and one or more managers appointed by the board. In this case, the board will act in a supervisory capacity to ensure that the management is carried out in accordance with applicable legislation and the by-laws of the company and to make all decisions of an unusual or far-reaching nature. It is also possible for an ApS to elect a control organ instead of a board of directors. The Companies Act does not set forth any requirements as to the residence of the board and/or managers. The members may thus be from either EU Member States or non-EU countries.

g. Shareholders' Meetings

The supreme body of a company is the shareholders' meeting. Every shareholder is entitled to attend the general meeting and to voice his or her opinion.[124] Shareholders holding at least 10% of the share capital may require that the shareholders be present at the shareholders' meeting.[125] Unless otherwise provided in the by-laws, the central management organ (i.e., the board of directors or the control organ) may decide that the shareholders may, but do not need to, be present at the general meeting and, if they are not, may vote electronically.[126] The entire meeting may also be conducted without any shareholders being physically present.[127] The by-laws may require shareholders to be present to cast their votes. A shareholder has the right to be represented by proxy[128] at the general meeting and to attend the meeting together with an adviser.[129]

The ordinary general meeting must be held at such time as to make filing of the accounts with the Danish Business Authority possible in accordance with the deadline stipulated in Section 138 of the Act on Annual Accounts. The accounts must be received by the Danish Business Authority within five months from the end of each financial year, or four months if the company is a group D company, i.e., a listed company (see V.B.2.a., below) within the meaning of the Act on Annual Accounts.[130]

An extraordinary general meeting may be convened when the central management organ, the control organ or the auditor appointed by the shareholders considers it expedient.[131] Any extraordinary meeting must be convened within 14 days after being requested by the board of directors, etc. Any shareholder of an ApS may call an extraordinary general meeting,[132] whereas only shareholders owning at least 5% of the share capital or owning any smaller percentage prescribed in the by-laws may call an extraordinary general meeting of an A/S.[133]

The following decisions must be adopted at the general meeting:[134]

(i) Approval of the annual report;

(ii) Application of the profit or covering of the loss in accordance with the approved annual report;

(iii) Changes in the rules concerning the auditing of the annual accounts if the company is no longer required to have its accounts audited annually; and

(iv) Resolution of other questions referred to the general meeting in accordance with the company's by-laws.

At the general meeting, all matters must be decided by a simple majority unless otherwise provided in the Companies Act or the by-laws.[135] Resolutions concerning changes to the by-laws in connection with capital increases, merger proposals, or the issuing of bonds, profit-sharing bonds or convertible securities must be adopted at a meeting at which at least two-thirds of the capital with voting rights is represented, and two-thirds of the votes cast are in favor.[136]

Some resolutions may only be passed if they are adopted by 9/10 of all votes cast as well as 9/10 of the share capital represented at the general meeting entitled to vote and, in the case of an ApS, by all the shareholders (see b., above). Furthermore, a resolution amending the by-laws so as to increase the liability of the shareholders towards the company may only be adopted if the shareholders whose legal status is impaired cast their votes for the resolution.[137]

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[120] CA, Sec. 200.
[121] CA, Sec. 111.
[122] CA, Sec. 117.
[123] CA, Sec. 117.
[124] CA, Secs. 76 and 78.
[125] CA, Sec. 76.3.
[126] CA, Sec. 77.1.
[127] CA, Sec. 77.2.
[128] CA, Sec. 80.
[129] CA, Sec. 81.
[130] CA, Sec. 88.2.
[131] CA, Sec. 89.1.
[132] CA, Sec. 89.2.
[133] CA, Sec. 89.3.
[134] CA, Sec. 88.
[135] CA, Sec. 105.
[136] CA, Sec. 106.
[137] CA, Sec. 107.

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The terms and conditions of a shareholders' agreement are not binding on the company. Any decisions adopted at a general meeting[138] in accordance with the Companies Act but in contravention of such terms and conditions, are valid and enforceable. Shareholders wishing to make the provisions of a shareholders' agreement binding on the company and other shareholders must have such terms and conditions incorporated into the by-laws.

h. Directors' Meetings

An A/S must have a board of directors or a control organ comprising at least three members.[139]

An ApS may elect to have a board of directors or a control organ.

The board of directors is in charge of the executive and strategic management of the company and must ensure that the company is properly organized. The board must also ensure that:

(i) The bookkeeping and the submission of the accounts is performed in a satisfactory manner, taking the size of the company into consideration;

(ii) The necessary procedures for risk management and internal control have been established;

(iii) The board of directors continuously receives reports on the financial position of the company;

(iv) Management performs its duties properly; and

(v) The company at all times has the necessary capital adequacy to secure sufficient liquidity to meet present and future liabilities as they become due for payment. The company is thus required at all times to appraise the economic situation and secure sufficient capital.[140]

The control organ must ensure that:

(i) The bookkeeping and the submission of the accounts is performed in a satisfactory manner, taking the size of the company into consideration;

(ii) The necessary procedures for risk management and internal control have been established;

(iii) The supervisory board continuously receives reports on the financial position of the company;

(iv) Management performs its duties properly; and

(v) The company at all times has the necessary capital adequacy to secure sufficient liquidity to meet present and future liabilities as they become due for payment. The company is thus required at all times to appraise the economic situation and secure sufficient capital.[141]

It is not a requirement that the board members or the members of the supervisory board be residents of either Denmark or another EU Member Sate or EEA country. The board members and the supervisory board elect a chairman.[142] The chairman cannot be the manager.[143] Further, if the company is listed on the Copenhagen Stock Exchange, there is a prohibition against a "working" chairman.

The board of directors and the control organ are legally competent to transact business when more than half of their members are present, unless stricter requirements are prescribed by the by-laws. However, to the extent possible, all members must have had the opportunity to consider the matter in question.[144] Meetings may be held electronically.[145]

Matters dealt with by the board or the control organ may be decided by a simple majority.[146] A member of the board or the control organ may not participate in the consideration of questions relating to agreements between the company and him or herself, concerning lawsuits against him or herself, or concerning any agreement between the company and a third party, or a lawsuit against a third party in which he or she has a material interest that may be in conflict with that of the company.[147]

The board must sign the annual report.

i. Books and Records

Accounting records must be kept in accordance with the Bookkeeping Act. No specific form of accounting records is required, but the records must be kept in accordance with good bookkeeping practices and be adequate for the particular business activity in question, and must permit the determination of the assets and liabilities and the result of the operation.[148]

The books do not have to be kept in Denmark, but the Danish authorities may require that the books be transferred to Denmark for inspection.

Under the Bookkeeping Act,[149] all books and accounting records must be retained for five years. Transfer pricing documentation and records on controlled transactions should be retained for at least seven years, as the Danish Tax Agency (*Skattestyrelsen* — DTA) may initiate ordinary reassessment of transfer pricing matters up to six or seven years after the end of the income year concerned. Further, transfer pricing documentation for previous years may form the basis for the assessment of controlled transactions for the following years.

j. Financial Statements

One or more independent accountants elected at the shareholders' meeting must audit the annual financial statement of an A/S or an ApS if the company falls within group B, C or D of the Act on Annual Accounts (see V.B.2.a., below).[150] At least one of the auditors must be a state-authorized or a registered public accountant.[151] If the company is classified as a group D company, at least one of the auditors must be state-authorized.[152] A small company falling within accounting group B (for example, small holding companies) may elect not to have

138 CA, Sec. 82.
139 CA, Sec. 111.2.
140 CA, Sec. 115.
141 CA, Sec. 116.
142 CA, Sec. 122.
143 CA, Sec. 111.1.
144 CA, Sec. 124.1.
145 CA, Sec. 125.2.
146 CA, Sec. 124.1.
147 CA, Sec. 127.
148 BKA, Sec. 6.
149 BKA, Sec. 10.1.
150 AA, Sec. 135.
151 AA, Sec. 135 a.
152 AA, Sec. 135.2.

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its accounts audited if two of the following three thresholds are not exceeded by the company and its subsidiaries in two financial years in a row as at the balance sheet date:

(i) A balance of DKK 4 million;

(ii) Revenue of DKK 8 million; and

(iii) An average of 12 full-time employees during the financial year.

Any shareholder may require that the Danish Business Authority appoint an additional auditor to participate in the auditing of the company, if shareholders owning at least 10% of the share capital have voted for a proposal at a general meeting to elect another auditor and the proposal was submitted at least two weeks prior to the date of the general meeting.[153]

Banks, insurance companies and companies quoted on the Copenhagen Stock Exchange are no longer required to appoint two independent accountants.

k. Dividends and Other Distributions

Under the Companies Act, assets of a company may be distributed to the shareholders as a dividend in connection with the adoption of the annual financial statement.[154] Interim distributions may also be made subject to certain conditions.[155] A shareholders' meeting may adopt a resolution to make interim distributions,[156] which may not, however, exceed the amount proposed or accepted by the central management organ. Such a resolution may, at the earliest, be made after the first annual accounts have been adopted. After the adoption of the first annual accounts, the shareholders may also authorize the central management organ to make interim distributions[157] for a period of up to five years. The authorization does not have to be incorporated in the by-laws but may be limited in time and set out any other limitations, besides the statutory restrictions, that the shareholders wish to impose on the central management organ. The decision to make an interim distribution must be noted in the corporate books and, in the case of an A/S, the following must also be observed:[158]

(i) The central management organ must decide whether the latest approved annual accounts will suffice or whether to prepare an interim balance sheet showing that sufficient funds are available for distribution. An interim balance must be prepared if the distribution takes place later than six months after the end of the latest financial year. The balance sheet must be reviewed and endorsed by the auditor of the company.

(ii) When deciding whether to make an interim distribution, the central management organ must verify that the interim distribution does not exceed a level that can be said to be appropriate, taking the financial situation of the company into consideration.

Otherwise, a distribution of funds to the shareholders may be made in the form of an allotment in connection with the reduction of the share capital or the legal reserve, or in connection with the dissolution of the company.

The company may only distribute as a dividend distributable reserves, i.e., the profit of the last financial year according to the approved annual accounts, profit carried forward from previous years and other reserves that may be distributed in accordance with the Companies Act or the by-laws.[159] This amount, however, must be reduced by any uncovered losses and by amounts that must be transferred for other purposes by law or under the company's by-laws.

The decision to distribute available profits as reflected in the financial statement must be made by the company at its general meeting.

The funds available for an interim distribution are the same as for an ordinary distribution increased by the profits generated during the current financial year up to the date the interim distribution is decided by the central management organ.

If profits are distributed by reducing the capital of the company, the approval of the general meeting must be obtained. After the reduction, there must be full cover of the minimum required share capital and other statutory reserves.

l. Reserves

The annual accounts, including the profit and loss (P&L) account and the balance sheet, must be prepared in accordance with the Act on Annual Accounts and its exhibits.[160] The company is required to allocate to a special reserve any amount received by the company for shares in a share subscription exceeding their nominal value.

Any statutory reserve, free reserve or special reserve may be used to:

(i) Cover losses that are not covered by distributable profits;

(ii) Issue bonus shares, provided the company does not have an uncovered loss; and

(iii) Distribute dividends provided the statutory requirements relating to the reduction of share capital are met.

3. Mergers and Acquisitions

A corporate takeover can take the form of a merger, in which case the transferring company is wound up without liquidation by the transfer of all its assets and liabilities to the receiving company. A takeover can also be effected by means of a consolidation in which two or more public limited companies are merged into a newly established company, which acquires the assets and liabilities of the merging companies. A merger is not subject to the consent of the creditors of the participating companies, but certain provisions apply that seek to ensure that the creditors are adequately protected in connection with a merger.

The following documentation will generally need to be prepared to carry through a merger, although certain exemptions apply (for more details, see further below):

(i) A plan for the merger (the "merger plan");

[153] CA, Sec. 144.3.
[154] CA, Sec. 180.
[155] CA, Sec. 182.
[156] CA, Sec. 182.
[157] CA, Sec. 182.2.
[158] CA, Sec. 183.
[159] CA, Sec. 180.2.
[160] AA, Sec. 23.

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(ii) A statement concerning the merger (this may be waived by all shareholders);

(iii) An interim balance sheet (if necessary);

(iv) A valuation report (this is not required if either a statement on the contemplated merger or a statement concerning the position of the creditors is prepared);

(v) A statement by the auditors concerning the merger plan (or the merger); and

(vi) A statement concerning the position of the creditors (this may be waived by all shareholders provided, however, that the creditors may file their claims against the company within a period of four weeks from the publication of the merger).

If only ApSs participate in the merger, the requirement to prepare a merger plan may be waived.

The merger plan (if prepared) and the statement concerning the creditors, if any, are filed with the Danish Business Authority at the latest four weeks after being signed. The merger plan (if prepared) and the statement concerning the creditors are published in the electronic information system run by the Danish Business Authority.

If a merger plan has to be prepared, the central management organs of the merging companies jointly prepare and sign the merger plan setting out the names of the companies, their registered offices, the payments to be made for the shares in the transferring company and the date from which any shares given in consideration will entitle the holder to dividends and other rights in the receiving company, and any benefits for the members of the board of directors, supervisory board or management.[161] The merger plan must be signed at the latest by the end of the accounting year in which the merger will take effect. If the merger plan is signed later, the merger cannot be effected.

The merger plan (if prepared) must contain the following information:

(i) The names and possible subsidiary names of the companies participating in the merger and whether the name of the dissolving company will be part of the name of the continuing company;

(ii) The registered offices of the participating companies;

(iii) The consideration for the shares in the company being dissolved;

(iv) The point in time from which the holders of shares issued in consideration of the merger are entitled to receive dividends;

(v) The rights in the continuing company that are allocated to shareholders and holders of debt instruments with special rights in the dissolving company;

(vi) Any other measures to the benefit of the shareholders and holders of debt instruments referred to in (v);

(vii) The entry into the shareholders' register of new shares issued;

[161] CA, Sec. 237.3.

(viii) The point in time from which the rights and liabilities of the dissolving company are deemed transferred for accounting purposes;

(ix) Any benefits granted to the members of the central management organs; and

(x) A draft of new bylaws if a new company is created as a result of the merger.

In addition to the meager plan, a statement explaining the merger must be prepared by the central management organ.[162] The shareholders may decide not to prepare this statement.[163]

An interim balance sheet must be prepared if the merger plan is signed later than six months after the end of the latest financial year;[164] however, the shareholders of an ApS may decide otherwise.[165]

If the share capital of the receiving company is increased in connection with the merger or a new company is established, the auditors must prepare a valuation report.[166] The report must contain a description of each asset contributed, the method applied for the valuation, a statement concerning the consideration received by the shareholders in the company being dissolved, and a statement confirming that the value of the assets transferred is at least equivalent to the consideration received, including the nominal value of the shares to be issued. The valuation report must not be made earlier than three months before the merger is finally approved by the shareholders.[167] A valuation report is not required in the case of a merger between two ApSs. The report may be omitted if either a statement concerning the merger is prepared in accordance with Section 241 of the Companies Act or a statement concerning the position of the creditors is prepared in accordance with Section 242 of the Companies Act. Further, a statement concerning the merger plan must be prepared by an auditor, unless the shareholders in the participating companies decide to waive this requirement.[168] The statement must confirm that the consideration for the shares in the dissolving company is fair and reasonable and explain the method applied in establishing the consideration.

The auditors also must prepare a statement confirming that the position of the creditors of the companies is sufficiently safeguarded after the merger.[169] If this cannot be confirmed or if no statement is prepared, the creditors may claim payment of claims due for payment and that security for other claims be provided.[170] The creditors must file their claims no later than four weeks after the decision to merge has been published by the Danish Business Authority in its electronic information system.

The merger plan must be filed with the Danish Business Authority no later than four weeks after being signed.[171] If it is filed later, the merger plan cannot be published, and the merg-

[162] CA, Sec. 238.
[163] CA, Sec. 238.2.
[164] CA, Sec. 239.
[165] CA, Sec. 239.2.
[166] CA, Sec. 240.
[167] CA, Sec. 240.4.
[168] CA, Sec. 241.
[169] CA, Sec. 242.
[170] CA, Sec. 243.
[171] CA, Sec. 244.

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er can thus not be completed. The merger plan and any statement concerning the position of the creditors are published by the Danish Business Authority in its electronic information system.

The decision to complete a merger may be made by the shareholders in the participating companies four weeks after the merger plan was published, at the earliest.[172] If only ApSs participate in the merger, the merger plan is waived and the creditors are adequately secured after the merger, the shareholders may approve the merger immediately.

The following documents, if prepared, must be made available to the shareholders four weeks before the general meeting at which the merger is finally approved:

(i) The merger plan;

(ii) The financial statements for the last three years as approved by the annual general meetings of the participating companies;

(iii) A statement explaining the merger;

(iv) An interim balance sheet;

(v) A valuation report;

(vi) A statement from the auditors concerning the merger plan and the consideration received; and

(vii) A statement from the auditors concerning the position of the creditors.

In the case of the transferring company, a resolution on a merger must be approved by the shareholders in a general meeting,[173] while the decision in the case of a receiving company normally can be made by the central management organ unless amendments to the by-laws are necessitated in connection with the merger.[174]

Notice of the merger as approved by the shareholders must be filed with the Danish Business Authority no later than two weeks after the date of approval. If the filing is not made in time, the merger cannot be registered.[175] The filing, however, must be completed by the later of: the time for filing the annual accounts of the receiving company; or one year after the publication of the merger plan.[176]

Simplified rules apply to a merger in which a subsidiary is merged into its parent company (a vertical merger).

The general meeting may also decide to divide an existing company into two or more companies under rules similar to those applicable to mergers and subject to the preparation of similar documentation. All assets and liabilities are assigned to the new companies against consideration paid to the shareholders in the divided company.[177]

4. *Liquidations*

A company may be dissolved either by way of liquidation in accordance with the Companies Act, if the company concerned is solvent, or under the rules of the Bankruptcy Act if the company is insolvent.

A company may be dissolved by the filing of a statutory declaration with the Danish Business Authority, stating that all creditors of the company have been paid. The declaration must be filed, at the latest, two weeks after the signing of the declaration. Under this procedure, the shareholders become personally and jointly liable for any debts not paid by the company at the time the declaration was signed.[178] A statement from the DTA confirming the payment of all corporate taxes and duties must be attached to the declaration.

A company may also be liquidated as described below.[179]

The resolution to liquidate a solvent public limited company must be adopted at a general meeting with the majority of votes required to amend the by-laws (generally 2/3 of the votes represented and cast).[180] Notification of the liquidation must be filed with the Danish Business Authority within 14 days after the general meeting. To inform the general public that the company is in liquidation, the company must add to its company name the words "*i likvidation*" (in liquidation).

The general meeting must elect one or several liquidators.[181] Shareholders owning 25% or more of the share capital of the company have the right to elect a liquidator together with the liquidator elected by the general meeting. A liquidator replaces the board or the manager and is responsible for winding up the affairs of the company.

The Danish Business Authority publishes a notice concerning the liquidation of the company on its website (www.cvr.dk) requiring creditors to submit their claims within three months after the notification.[182] Noncompliance does not preclude the later filing of a claim, provided filing takes place prior to the final dissolution of the company.

A copy of the notice must be forwarded to all creditors known to the liquidator. If the liquidator rejects a claim by a creditor, the creditor must be informed of this in writing. A creditor wishing to dispute the decision of a liquidator must initiate legal proceedings before the Probate Court within three months of the date of the notice.

The distribution of the assets of the company may take place in accordance with annual accounts approved during the liquidation proceedings or by way of interim dividends.[183] The liquidation proceeds may not be distributed before the three-month period for the filing of claims by creditors has expired and creditors that have filed claims are paid in full.[184]

Once the liquidation proceeds have been distributed, the liquidation proceedings may be completed. The shareholders vote for the approval of the final liquidation accounts.[185] The liquidator is required to submit to the Danish Business Authority a copy of the final accounts, at the latest, 14 days after the accounts are approved by the general meeting. The company

[172] CA, Sec. 245.
[173] CA, Sec. 246.
[174] CA, Sec. 247.
[175] CA, Sec. 251.
[176] CA, Sec. 251.2.
[177] CA, Secs. 255–270.
[178] CA, Sec. 216.
[179] CA, Sec. 217.
[180] CA, Sec. 217.2.
[181] CA, Sec. 218.
[182] CA, Sec. 221.
[183] CA, Sec. 222.
[184] CA, Sec. 223.
[185] CA, Sec. 224.

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will be deregistered by the Danish Business Authority when the final financial statement is received.

It should be noted that, while in the case of a solvent liquidation, it is the shareholders that appoint the liquidator,[186] in the case of insolvency, the trustee is appointed by the probate court at the recommendation of the creditors.[187]

5. *Preventive Restructuring*

Under the Companies Act, if more than one-half of a company's share capital is lost, the board of directors, the control organ or management must take steps to hold an extraordinary general meeting within six months. At that meeting a report on the company's financial situation must be presented and proposals for measures to be taken must be made, which may include a proposal to liquidate the company.[188]

The rules on the liability of directors must also be taken into account when considering whether it is possible to carry on business as an insolvent company. The Bankruptcy Act contains rules for reorganizations and compulsory composition.

C. European Companies

Council Regulation (EC) No. 2157/2001 of October 8, 2001, on the Statute for a European Company (*Societas Europaea* or SE) was implemented in Denmark in 2004. The Statute provides for the establishment of an SE by way of a merger, the establishment of a holding company, a subsidiary or a corporate restructuring. The aim of the legislation is to reduce the barriers to establishing companies within the European Union or EEA. The Council Regulation has the immediate power of law in Denmark and the Act[189] implementing the Council Regulation must thus be read in conjunction with the Council Regulation.

The Act applies to all European public limited liability companies (SEs) having their registered offices in Denmark and to companies participating in the formation of an SE. The minimum capital is 120,000 euros, which must be expressed in Danish kroner or euros.[190] The name of the company must include the abbreviation "SE."

The head office of an SE must be situated in the Danish municipality of the SE's registered office.[191]

Article 2 of the Council Regulation sets out a number of provisions concerning the formation of an SE. In addition, the Danish Act provides that a company whose head office is not in the European Union or the EEA may participate in the formation of an SE that has its registered office in Denmark, if the SE:

(i) Is formed under the law of a Member State;

(ii) Has its registered office in that Member State; and

(iii) Has a real and continuous link with a Member State's economy.[192]

An SE may be formed by merger under the provisions of the Council Regulation, in which case shareholders opposing the merger at the general meeting of shareholders will be entitled to demand that the company redeem their shares, provided such demand is submitted in writing within four weeks of the general meeting. If, prior to the resolution of the general meeting, shareholders were asked to declare whether they intended to avail themselves of the redemption entitlement, the redemption right will be conditional on a shareholder having so declared at the general meeting.[193]

Shares redeemed by the company must be redeemed at a price equivalent to the value of the shares. If the company and the shareholders fail to agree as to the value for purposes of redemption, the value will be determined by experts appointed by the court in the jurisdiction of the company's registered office. The decision of the experts may be appealed by either the company or by dissenting shareholders who opposed the merger at the general meeting. Any such appeal must be brought before the court within three months of receipt of the experts' valuation.

The certificate to be issued under Article 25(2) of the Council Regulation attesting that all pre-merger acts and formalities have been completed may be issued when acceptable security has been provided for the value of the shares. Experts appointed by the court in the jurisdiction of the company's registered office determine whether the security provided is acceptable. Where the experts' decision is brought before the court, this does not delay the issue of the certificate under Article 25(2) of the Council Regulation by the Danish Business Authority, unless otherwise determined by the court.

Further, an SE may be formed by way of an SE holding company, an SE subsidiary or the corporate restructuring of a public limited liability company (A/S) subject to certain conditions.

The registered office of an SE may be transferred to another Member State in accordance with the provisions of the Council Regulation.[194] Shareholders opposing the transfer at the general meeting of shareholders are entitled to demand that the company redeem their shares, provided such demand is submitted in writing within four weeks after the general meeting. In this case, a certificate is to be issued under Article 8(8) of the SE Regulation attesting that all pre-transfer acts and formalities have been completed. This presupposes that acceptable security has been provided for the value of the shares.

It is a condition precedent for transferring the registered office to another Member State in accordance with the provisions of the Council Regulation that a notice is placed on the website www.cvr.dk asking the company's creditors and holders of other rights to file any claims within two months following the publication of the transfer proposal. The transfer cannot be completed before all claims filed have been satisfied and acceptable security has been provided on request for claims not due for payment or disputed claims.[195] If the company disputes whether security needs to be provided or argues that sufficient security has been put in place, the creditor concerned

[186] CA, Sec. 218.

[187] Act No. 1259 of October 23, 2007, the Act on Bankruptcy (*Konkursloven*), as amended, Sec. 113.

[188] CA, Sec. 119.

[189] Act No. 735 of July 5, 2019 (*lov om det europæiske selskab* or "SE Act").

[190] SE Act, Sec. 2.

[191] SE Act, Sec. 3.

[192] SE Act, Sec. 4.

[193] SE Act, Sec. 5.

[194] SE Act, Sec. 6.

[195] SE Act, Sec. 7.

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may, within two weeks of the claim being filed, bring the matter before the bankruptcy court in the jurisdiction in which the company's registered office is situated to obtain a ruling on the issue.

An SE will retain its name after publication of the transfer proposal with "*under flytning*" (under transfer) added to the name.

Under the Council Regulation and the Danish SE Act, an SE may be established with a two-tier management system, like a Danish A/S. In this case, the provisions of the Danish Companies Act and legislation in general applicable to the board of directors or executive board of a private limited liability company or its members apply *mutatis mutandis* to the management organ of the SE or its members, unless otherwise provided in the Act.

The supervisory organ must have no less than three members and the management organ must have at least one member.[196]

An SE may also be established with a one-tier management system, like an ApS. However, in such circumstances, the provisions of the Danish Companies Act and other legislation that applies to the board of directors of a public limited liability company or its members will be applied *mutatis mutandis* to the administrative organ of the SE or its members.

The administrative organ must consist of not less than three members and must appoint at least one managing director to be in charge of the day-to-day management of the company.

The first general meeting of an SE must be held not later than 18 months after the SE's formation.[197] Except for the first accounting year, the accounting year is 12 months.

The Danish Business Authority will decide that an SE is to be dissolved, if necessary under Section 117 of the Companies Act, if the SE does not meet the Council Regulation requirement that the registered office and head office must be in the same Member State and if this situation is not remedied before the expiry of a deadline to be fixed by the Danish Business Authority.

A Danish SE must be registered with the Danish Business Authority.[198]

A business may also be established as a European Economic Interest Grouping (EEIG) subject to the provisions in Council Regulation (EEC) No. 2137/85 of July 25, 1985, or as a European Cooperative Society (SCE) subject to Council Regulation (EC) No. 1435/2003 of July 22, 2003, on the Statute for a European Cooperative Society (SCE).

D. Other Business Entities

Under Danish law, it is possible to establish corporate entities independently of the company law and a number of such corporate entities exist, most of which have a well-defined structure established in the legal tradition. Among the most important such corporate entities are various societies, unions and foundations (see IX., below, regarding the legal structure and taxation of such entities).

Additionally, a specific regime exists for the establishment of employee investment companies (MEs). MEs are, however, hardly ever used in practice (since 2014, only two MEs have been incorporated — both with respect to the same employer) as the advantages for the employees, including the tax advantages, will often be very limited. The most common ways of involving the employees in the growth and development of a company are share-based incentive programs and similar incentive schemes.

An ME has two kinds of participants: (i) a fully liable participant that must be an A/S or ApS established and owned by the business for the benefit of which the ME has been established, the sole purpose of the A/S or ApS being to be a fully liable participant in the ME; and (ii) the participating employees, who are then only liable for the amount they contribute.

Under the regime, employees may contribute a portion of their salary to an ME, which the ME must use as a source of funding towards the employing company as risk-bearing capital. An employee may contribute an amount equal to 7.5% of his or her annual salary, up to a maximum of DKK 30,000. No income tax is paid on the amount contributed but the amount is subject to a Danish labor market contribution at a rate of 8%. Taxation of the contributed amount is deferred until the amount is repaid.

The funds contributed to the ME may be lent to the business where the employee works, to its suppliers or customers, or for other purposes that may be of importance for the modernization or development of the business.

The contributions may be made over a period of five years and are subsequently bound for a period of three years. After the expiry of the three-year period, amounts may be repaid to the employees based on a calculation of the result in the period in which the employees have been participants in the ME. The procedure for repayment should be set forth in the bylaws of the ME.

An ME must be registered with the Danish Business Authority.

[196] SE Act, Sec. 9.
[197] SE Act, Sec. 13.
[198] SE Act, Sec. 16.

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IV. Principal Taxes

A. *Sources of Authority in Tax*

1. Legislative

a. Organization of the Tax Law

The basic tax act is the National Income Tax and Wealth Tax Act, also referred to as the State Tax Act of 1922.[199] A basic distinction between recurring income and the increase or decrease in value of the taxpayer's assets is laid down by the Act. Pursuant to this distinction, recurring income is subject to income tax whereas an increase or decrease in asset value is not taxable. In general, gains realized from the sale of the taxpayer's assets are exempt from taxation unless the taxpayer is a trader for tax purposes in such assets (for example, a bank or a financial institution). Expenses are deductible to the extent they are incurred to acquire, secure or maintain income. However, many laws have introduced provisions deviating from the basic principles of taxation. For example, under the Act on Taxation of Gains and Losses on Shares[200] and the Act on Taxation of Gains on Real Property,[201] capital gains on shares and capital gains on real property are subject to tax.

There is no single tax code but rather a great number of laws dealing with specific areas or issues.

b. Other Legislative Documents that Can Be Used to Interpret the Law

Legal history plays an important role in the interpretation of existing tax laws. Danish courts have a tradition of placing great emphasis on legal history even though the wording of the code is the starting point when construing a specific law. The legal history of an act can be found in the Danish language at the home page of the Danish Parliament (*Folketinget*).[202]

c. Legislative Process

The Minister for Taxation, a political party or a single member of Parliament may make a proposal for a new tax law. This may be done in connection with the annual finance bill but is often done when it is felt that new legislation is required.

The act is usually prepared by the civil servants of the Ministry of Taxation. The Minister for Taxation may appoint a number of special committees consisting of tax specialists to prepare reports on more complex legislation. Such reports are an important source of law. When the civil servants have finalized the preparatory work, a bill is submitted to Parliament. The bill may also be based on the report prepared by the specialists. The bill is read three times by Parliament. Between the first and second readings, organizations such as FSR — Danish Auditors, the Danish Bar Association, Danish lawyers, businesses and other interested parties are often invited to comment and/or raise questions concerning a bill. Any person may submit comments to the Danish Parliament. Such comments may lead to changes in the bill submitted and the answers given by the Minister are of great importance when the final act is later construed by the Danish Tax Agency (*Skattestyrelsen* — DTA) or the courts.

d. Constitutional Challenge

Under Section 43 of the Danish Constitution,[203] no taxes may be imposed, changed or terminated unless authorized by law. Furthermore, under Section 46, no taxes may be collected before a finance bill or an interim finance bill is passed by Parliament. In a few instances, the Danish Supreme Court has determined what constitutes a tax. For example, in a 1993 decision,[204] it found that fees collected for the issuing of passports and driver's licenses were not a tax within the meaning of Section 43. On the other hand, the annual administrative adjustment of various figures in tax laws was considered to be a tax in a 2007 decision.[205] The Court added that Section 43 did not prevent the DTA from making such adjustments.

The Danish Constitution does not lay down a special procedure to be followed by a taxpayer wishing to make a constitutional challenge to a tax law. For the general court procedure to be followed, see 3., below.

A taxpayer may also contend that a law violates European Union (EU) principles. In that case, the court before which the matter is pending may refer the matter to the Court of Justice of the European Union (CJEU) requesting a preliminary ruling on the issue. This ruling is then taken into account when the court renders its decision in the matter.

2. Administrative

The income of a taxpayer is assessed by the DTA based on the tax return filed by the taxpayer. The rules to be followed when a taxpayer wishes to challenge an assessment are found in the Act on Tax Administration.[206]

If a decision is challenged by a taxpayer, a tax appeal administration board decides whether the case is to be heard[207] by a regional tax appeal tribunal (*Skatteankenævn*) or the National Tax Tribunal (*Landsskatteretten*). It should be noted that the National Tax Tribunal is not an ordinary court of law, but rather an administrative body. A complaint regarding an assessment must be filed no later than three months after the taxpayer has received the assessment[208] by the DTA. A final decision of a regional tax appeal tribunal or of the National Tax Tribunal can be brought before the ordinary courts no later than three months after the decision has been made.[209]

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[199] Act No. 149 of April 10, 1922, the National Income Tax and Wealth Tax Act (*Statsskatteloven* or NIT), as amended.

[200] Consolidated Act No. 172 of January 29, 2021, the Act on Taxation of Gains and Losses on Shares (*Aktieavancebeskatningsloven* or TGLS), as amended.

[201] Consolidated Act No. 132 of January 25, 2019, the Act on Taxation of Gains on Real Property (*Ejendomsavancebeskatningsloven* or TGRP), as amended.

[202] Available at: https://www.ft.dk/da/dokumenter/dokumentlister/lovforslag.

[203] Act No. 169 of June 5, 1953, the Constitution of the Kingdom of Denmark (*Grundloven* or Constitution).

[204] *Ugeskrift for Retsvæsen* (UfR) 1993.757. UfR is a weekly case reporter.

[205] UfR 2007.788.

[206] Consolidated Act No. 385 of June 3, 2022, the Act on Tax Administration (*Skatteforvaltningsloven* or TA), as amended.

[207] TA, Sec. 4a.

[208] TA, Sec. 35a.3.

[209] TA, Sec. 48.3.

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The DTA also publishes (in Danish) an annual legal guide (*Den juridiske vejledning*), which is generally binding on the tax authority, but it is not binding on Danish taxpayers. Thus, positions taken by the DTA that are based on the legal guide may be challenged or invoked by taxpayers. The DTA legal guide is updated twice annually and available online.[210]

3. Courts

There are no specialist tax courts within the Danish court system.

As noted in 2., above, an appeal must be brought before the court at the trial level where the taxpayer resides. The procedural rules to be followed are laid down in the Act on Legal Procedure, which applies to all court cases.[211]

A case at the trial level is usually heard by one judge, but in more complex matters three judges may sit. The court at the trial level may refer the case to the Court of Appeal; this court then decides whether the case should be heard at the appeal level in the first instance. There are two Courts of Appeal in Denmark: the Western Court of Appeal has jurisdiction over Jutland and the Eastern Court of Appeal has jurisdiction over the remaining part of Denmark.

A decision made at the trial level may be appealed to a Court of Appeal. An appeal to the Supreme Court may only be made with the permission of the Danish Appeals Permission Board unless the matter is heard in the first instance by a Court of Appeal. Then, an appeal may be made to the Supreme Court. Permission by the Danish Appeals Permission Board may be granted in very special cases, for example, cases involving a similar matter that have been decided differently by the Eastern Court and the Western Court.

B. Income Tax

Income tax is payable by individuals at progressive rates and by companies, associations, estates, etc., at a flat rate. Taxable income is gross income less allowable deductions.

In general, residents of Denmark are subject to taxation in Denmark on all income, whether arising in Denmark or abroad. Nonresidents are generally taxed only on Danish-source income.

The basic legislative framework is the National Income Tax and Wealth Tax Act (*Statsskatteloven*),[212] the Tax at Source Act (*Kildeskatteloven*),[213] the Tax Assessment Act (*Ligningsloven*),[214] the Corporate Tax Act (*Selskabsskatteloven*),[215] and the Personal Tax Act (*Personskatteloven*).[216]

C. Capital Gains Tax

Capital gains realized by a corporate taxpayer are taxed as part of ordinary corporate income. Capital gains realized by an individual are included in the taxpayer's ordinary income and taxed at different rates depending on the kind of capital gain. For more detailed information, see V.B.3.b., below.

D. Estate Duty and Gift Tax

1. Estate Duty

a. In General

Estate duty[217] is levied on the estate of a deceased who, at the time of his or her death, was a resident of Denmark.[218] The Estate Duty and Gift Tax Act does not contain any statutory definition of residence. However, a deceased will be deemed to be a resident of Denmark if the he or she had a permanent home available to him or her in Denmark, or can be considered to have had links to Denmark that were as close as, or closer than, the links he or she had to any foreign country because he or she had a habitual abode in Denmark. If the deceased was a nonresident who owned real property in Denmark, then this property will be subject to estate duty.[219] No Danish estate duty is imposed on an inheritance received by a resident of Denmark from the estate of a nonresident, though foreign inheritance tax may, of course, be payable.

Estate duty is, initially, imposed at a flat rate of 15% on the net assets of the estate concerned.[220]

For decedents who died in 2016–19, lower rates of between 13% and 6% were historically applied to the succession of businesses if certain conditions were fulfilled. The reduced rates have, however, been abolished with effect for decedents of persons dying on or after January 1, 2020. Thus, family business successions from January 1, 2020, are subject to the standard flat rate of 15%.[221]

When the reduced rates for family business successions were abolished, new legislation was introduced with effect for descendants of persons dying on or after January 1, 2020, under which the heirs in the deceased's estate may elect to pay estate duty in equal instalments for a period of up to 30 years with respect to family business successions subject to the fulfillment of certain conditions. If payment in instalments is opted for, the outstanding estate duty carries interest at a rate of 6% (2024) on a yearly basis.[222] An election for the instalment scheme may only be made if the transfer consists of an active business or shares in an active business.

With respect to the transfer of shares, the following conditions must be fulfilled:

(i) The heir must receive at least 1% of the share capital issued by the company concerned; and

(ii) The company concerned must be engaged in active business activities and not merely making passive investments, such as holding cash or securities, or leasing real property, to a significant degree. A company is deemed

[210] See *Den juridiske vejledning 2024-2*, available at: https://info.skat.dk/data.aspx?oid=124.

[211] Consolidated Act No. 1655 of December 25, 2022, as amended, the Act on Legal Procedure (*Retsplejeloven*).

[212] Act No. 149 of April 10, 1922, as amended.

[213] Consolidated Act No. 824 of April 28, 2021, as amended.

[214] Consolidated Act No. 42 of January 13, 2023, as amended.

[215] Consolidated Act No. 1241 of August 22, 2022, as amended.

[216] Consolidated Act No. 1284 of June 14, 2021, as amended.

[217] Consolidated Act No. 11 of January 6, 2023, the Act on Estate Duty and Gift Tax (*Boafgiftsloven* or EDGTA), as amended.

[218] EDGTA, Sec. 9.1.

[219] EDGTA, Sec. 9.2.

[220] EDGTA, Secs. 1.1. and 1a.

[221] Act No. 1589 of Dec. 27, 2019, amendment of EDGTA and TA.

[222] EDGTA, Sec. 36.1 (*Standardrenten i henhold til selskabsskattelovens*, Sec. 11 B, stk. 2).

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to be leasing real property or holding cash or securities to a significant degree if at least 50% of the average of its income in the last three accounting years is derived from such activities, or the average market value of its leasing property, cash and securities in the last three accounting years amounts to at least 50% of its total assets. If the company owns at least 25% of the shares in another company, the activities of that company are to be taken into consideration for purposes of determining whether this test is passed.

An additional estate duty of 25%[223] is payable on the value of the decedent's assets that are received by persons other than:

(i) Issue, stepchildren and their issue;

(ii) The decedent's parents;

(iii) The spouse of a predeceased child or stepchild;

(iv) Individuals who resided with the decedent during the last two years preceding the time of death, and individuals who, although not residing with the decedent at the time of death, resided with the decedent for a continuous period of at least two years, if the reason for the termination of the joint residency was the fact that one of the parties was institutionalized (this includes taking up residence in a home for the elderly);

(v) The separated or divorced spouse of the decedent; and

(vi) Foster children who resided with the decedent for a continuous period of at least five years, provided the joint residency commenced before the foster child reached the age of 15 and no more than one of the blood parents of the foster child resided with the decedent and the foster child.

The surcharge of 25% is also payable on the value of assets that are subject to conditions that make it impossible to determine before the duty is payable whether the surcharge of 25% applies.[224]

Certain transfers are exempt from estate duty, such as any inheritance received by a surviving spouse, including any payment made pursuant to a life insurance policy, whether received in installments or as a lump sum, donations to charitable organizations, and certain other insurance amounts.[225] Pensions and certain payments under pension schemes received by the decedent's children or stepchildren under the age of 24 are also exempt from duty.

If only a limited interest is granted to the successor and legal title to the assets is retained or transferred to another person, no duty is imposed on the capital value of the interest granted. For income tax purposes, the person enjoying the limited interest is subject to tax on any income from the assets.

Note: The Danish Ministry of Taxation has released a draft bill proposing: (i) to reduce the succession tax rate from 15% to 10%; (ii) to introduce a standardized valuation model in order to determine the tax base of a family business using clear guidelines; and (iii) to make it possible to transfer real estate businesses by relying on the rules on succession.

b. Calculation of Estate Duty

As noted in a. above, the estate duty is imposed at a flat rate of 15% and a surcharge of 25% is imposed on the share of the estate received by someone other than the persons enumerated above.

An allowance of DKK 333,100 (2024) is granted before calculation of the estate duty.[226] The application of these provisions may be illustrated by the following example:

Example: One son and one brother survive the deceased. Under the provisions of a will, the son will receive half of the estate (which is equivalent to his legal entitlement), the housekeeper of the deceased will receive an inheritance of DKK 100,000 net of any estate duty, and the brother will take the remainder of the estate.

Net Assets of the Estate (DKK)		**2,000,000**
Less allowance		331,100
		1,666,900
Estate duty 15%		250,035
Net assets		2,000,000
Less estate duty		333,100
Total net assets		1,666,900
Child to receive one half		833,450
Brother and housekeeper to receive	833,450	
Less surcharge at 25%	208,363	625,088
Less inheritance to housekeeper		100,000
Brother to receive		525,088
Total estate duty payable	250,035	
	208,363	458,398

Estate duty is imposed on the net assets inherited. Any liabilities assumed by the successor attached to the inheritance may be deducted for purposes of this calculation. Further, in calculating the amount subject to estate duty, the cost of administering the estate and any income tax paid by the estate may be deducted.

The successor may only take over the taxable position of the decedent with regard to certain assets subject to capital gains taxation or ordinary income.[227] In this case, a rollover relief is granted that may be deducted for purposes of calculating the estate duty. The rollover relief amounts to 30% of the gain

[223] EDGTA, Sec. 1.2.
[224] EDGTA, Sec. 1.3.
[225] EDGTA, Sec. 3.

[226] EDGTA, Sec. 6.1.
[227] Consolidated Act No. 426 of March 28, 2019, on the Taxation of Estates (*Dødsboskatteloven* or TE), as amended, Secs. 36 and 29.

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calculated. In the case of shares, the relief amounts to 22%. If the decedent was a professional trader in shares for income tax purposes, the relief would be 30%.[228]

A successor may take over the taxable position of the deceased with regard to real property if more than half of the real property was used by the business conducted by the deceased. If less than half of the property was used by the deceased in his or her business, then a proportionate share of the gain equivalent to the share used for business purposes may be taken over by the successor.[229]

A successor may take over the taxable position of the deceased with regard to shares in a company if the following conditions are fulfilled:[230]

(i) The heir must receive at least 1% of the shares issued by the company; and

(ii) The shares may not be shares in a company that is primarily engaged in the passive investment of funds. A company is deemed to be a passive investment vehicle if at least 50% of its income on average over the last three accounting years is derived from real estate, securities, cash or similar assets, or the market value of its real estate, securities, cash and similar assets on average over the last three accounting years or at the time of the transfer amounts to at least 50% of its total assets. If the company owns at least 25% of the shares in another company, the activities of that other company are to be taken into consideration for purposes of determining whether this test is met on a consolidated basis.

The provisions do not apply if the successor is a surviving spouse.[231] A surviving spouse succeeds in the taxable position of the deceased by default, i.e., not subject to the meeting of specific requirements.

Finally, a credit for foreign inheritance taxes paid is granted.[232] The credit cannot exceed an amount equivalent to the Danish estate duty on the assets in question. No credit is granted if the assets are exempt from Danish estate duty under the Act on Estate Duty and Gift Tax or under an inheritance and gift tax treaty.

2. *Gift Tax*

Gift tax applies to lifetime gifts made to the following persons:[233]

(i) The donor's issue and stepchildren, and their issue;

(ii) The spouse of a predeceased child or stepchild of the donor;

(iii) The parents of the donor;

(iv) Individuals who have lived with the donor during the two-year period preceding the date on which the gift is made and individuals who, although not residing with the donor at the time of the gift, have lived with the donor for a continuous period of at least two years, if the reason for the termination of the joint residency is the fact that one of the parties was institutionalized (this includes taking up residence in a home for the elderly);

(v) Foster children of the donor who have a joint residence with the donor for a continuous period of at least five years, provided the joint residency was established before the foster children reached the age of 15 years and a maximum of one of the blood parents of the foster child has lived together with the donor and the foster children; and

(vi) Stepparents and grandparents of the donor.

Lifetime gifts made to individuals other than those listed above under (i)–(vi) (most noticeably siblings and their spouses) must be included in the ordinary income of the donee.

Gift tax is levied on lifetime gifts if either the donor or the donee is a resident of Denmark.[234] Further, the tax is imposed even if the donor or the donee is not resident in Denmark when the gift is land or property located in Denmark or any asset connected thereto, or any other net asset that forms part of a permanent establishment (PE) in Denmark.

Gift tax is imposed at a flat rate of 15% if the gift is made to the issue, the spouse of a predeceased child or stepchild, or the parents of the donor.[235] Gifts received by step-parents or grandparents are subject to taxation at a flat rate of 36.25%.[236] Gift tax is imposed on the net value of the gift received.

An annual gift tax allowance of DKK 74,100 (2024) is granted.[237] This allowance permits a donor to make a gift of DKK 74,100 to each of the individuals mentioned above without triggering payment of gift tax. For example, a donor having three children may transfer as gifts a total amount of DKK 222,300 annually without paying any gift tax. The allowance is reduced to DKK 25,900 (2024) if the gift is made to the spouse of a child or a stepchild's spouse.[238]

Gift tax is imposed on net assets transferred as a gift. Any liabilities assumed by the donee attached to the gift may be deducted for purposes of this calculation.

If a donee takes over the taxable position of the donor with regard to assets subject to capital gains taxation or ordinary income tax, a rollover relief is granted that may be deducted for purposes of calculating the gift tax due.[239]

With respect to shares in a company, rollover relief is only available if the following conditions are fulfilled:

(i) The transfer must be to the issue or stepchildren of the transferor, to brothers or sisters of the transferor and their issue, or to individuals who have lived with the transferor during the last two years preceding the transfer;

(ii) The shares acquired must constitute at least 1% of the share capital issued by the company;

[228] EDGTA, Sec. 13a.3.
[229] TE, Sec. 29.2.
[230] TE, Sec. 29.3.
[231] TE, Sec. 29.5.
[232] EDGTA, Sec. 29.
[233] EDGTA, Sec. 22.
[234] EDGTA, Sec. 25.
[235] EDGTA, Sec. 23.1.
[236] EDGTA, Sec. 23.2.
[237] EDGTA, Sec. 22.1.
[238] EDGTA, Sec. 22.2.
[239] TGLS, Sec. 34.

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(iii) The company that issued the shares must be a company that is not primarily engaged in the passive investment of funds; and

(iv) The shares may not be shares covered by Section 19 of the Act on Taxation of Gains and Losses on Shares (for example, shares in an investment company).

Conditions (ii) and (iii) do not apply if, for tax purposes, the donor is considered to be trading in shares.

A company is deemed to be a passive investment vehicle if at least 50% of its income on average over the last three accounting years is derived from real property, securities, cash or similar assets, or the market value of its real property, securities, cash and similar assets on average over the last three accounting years or at the time of the transfer amounts to at least 50% of its total assets. If the company owns at least 25% of the shares in another company, the activities of that other company are to be taken into consideration for purposes of determining whether this test is met on a consolidated basis.

A credit for foreign gift taxes paid is granted. The credit may not exceed an amount equivalent to the Danish gift tax on the assets in question.

Any gifts exceeding the annual allowance must be reported to the DTA by May 1 of the year following the year in which the gifts are made at the latest. The gift tax also must be paid by that date.[240]

The donor and the donee are jointly liable for the payment of any gift tax. However, if the donor agrees to pay the gift tax, the amount of tax is not to be taken into consideration for purposes of calculating the gift tax. The effective rate of tax is thus reduced to 13.04%. For example, if the donor makes a gift of 100 and pays the tax of 15, the donee effectively receives a gift of 115, on which 15 is paid in tax or 15/115 × 100 = 13.04%.

E. Value Added Tax

1. In General

Denmark applies a single value added tax (VAT) rate of 25% to all deliveries of goods and services undertaken by "taxable persons" under the Danish VAT Act.[241] The VAT Act implements Council Directive 2006/112/EC of November 28, 2006, on the common system of value added tax (the "Common VAT System Directive"), as amended. The Common VAT System Directive as well as case law of the CJEU are of relevance in interpreting the Danish VAT Act. For further information on the Common VAT System Directive, refer to 7450 T.M., *Business Operations in the European Union — Taxation*, chapter XVIII. European Union Secondary Legislation — Value Added Tax.

For further research on Denmark's VAT system, see also the VAT Navigator.

2. Taxable Deliveries

VAT is levied on taxable supplies of goods or services undertaken by taxable persons. Taxable persons include any natural person, company, partnership or other entity that independently carries on economic activities, thus including entities that may be considered transparent for direct tax purposes.

Independent economic activities are, in essence, any form of trade. The activities of employees, those of taxable persons acting in a private capacity and the mere passive possession of investment assets do not constitute independent economic activities for purposes of VAT. The commencement and winding down of business activities are, however, within the scope of VAT.

Any supply of services or goods undertaken by a taxable person is, unless expressly exempt, subject to Danish VAT if the supply is deemed to have been made in Denmark.

A taxable person's application of goods for purposes other than those of the taxable person's business are also deemed to constitute a taxable delivery, i.e., a self-supply, meaning that VAT must be calculated and paid as if an actual delivery had taken place.

As of mid-2021, the self-supply rules also became applicable to "capital goods." This category refers to goods that are larger or more valuable assets, including machinery and software, with costs exceeding DKK 100,000. The term also, and importantly, includes real property.

The inclusion of real property in the field of application of the self-supply rules, means that real property constructed for purposes of delivery as a new building, which is a supply subject to VAT entitling the supplier to an input VAT deduction but which is instead applied for purposes of VAT-exempt letting, will constitute a self-supply for VAT purposes and, therefore, trigger an obligation to pay VAT on the market value of the real property in question, even though no delivery has in fact taken place.

This means that the transfer of inventory, machinery and other equipment transferred along with, for example, business contracts and/or employees, is not considered a taxable supply insofar as the transferred assets constitute an entire business, or a part of a business, that is capable of carrying on an independent economic activity. A rental property transferred with tenants can constitute a going concern for purposes or these provisions. This applies regardless of whether the property is subject to voluntary VAT registration for commercial letting or is let out without VAT being levied on the rent.

Business transfers completed as asset sales are therefore, to a large extent, not subject to Danish VAT. Danish VAT law requires the purchaser to register for VAT purposes if not already registered, unless the transferred business is a VAT-exempt business.

3. Payments of VAT

The supplier is, as a point of departure, liable for payment of VAT levied on taxable supplies.

However, VAT on certain supplies is payable by the recipient of the goods or services, i.e., subject to "reverse charge." Reverse charge will to a large extent apply to supplies of goods and services delivered to taxable persons which are VAT registered in Denmark, when the supplier is established outside Denmark.

VAT paid as reverse charge is deductible to the same extent as input VAT, as discussed below.

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[240] EDGTA, Sec. 26.

[241] Consolidated Act No. 1021 of September 26, 2019, as amended, the VAT Act (*Momsloven* or VA).

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VAT is also payable on goods or services imported from non-European Union countries, the "import VAT" being payable by the importer of the goods or services in question.

4. Calculation of VAT

The actual amount of VAT to be settled is calculated as the difference between the taxpayer's output VAT (i.e., VAT charged on sales of goods and services) and the taxpayer's deductible input VAT (i.e., VAT paid on purchases of goods and services).

The right to deduct input VAT depends on the nature of the goods and services delivered by the supplier. Deductible VAT is the VAT which the supplier has paid on all purchases applied either directly in relation to the supplier's deliveries that are subject to VAT, or as overhead costs relating to the general activities of the supplier, if these activities are subject to VAT.

If the activities of the supplier fall outside the scope of VAT or if the deliveries of the supplier are VAT-exempt (as opposed to zero-rated, see 5., below) any input VAT on purchases relating to such deliveries are non-deductible.

5. Exempt Supplies

As a point of departure, all deliveries of goods and services are subject to VAT unless expressly exempt. VAT-exempt deliveries are listed exhaustively in Section 13 of the VAT Act, which exempts the following supplies from VAT:

(i) Treatment at hospitals, and services rendered by doctors and dentists.

(ii) Social welfare, including kindergartens and nursing homes. Certain welfare services provided by private entrepreneurs are subject to VAT.

(iii) Schools and universities. Courses provided by professionals are subject to VAT.

(iv) The supply of services and goods by associations and organizations to their members in consideration for a fee. It is a condition precedent that the association concerned should be a non-profit entity and its object that of a political, labor market, religious, patriotic, philosophical or philanthropic nature. The activities of the association may not cause distortion of competition.

(v) Certain sporting activities, but not events in which professional sportspersons participate.

(vi) Cultural activities, including those of libraries, museums and zoos. The exemption does not encompass the radio and television business, theaters (including movies and concerts), or similar activities.

(vii) The activities of authors and composers, and other artistic activities.[242]

(viii) The letting of real property, including the supply of gas, water, electricity and heating as part of the letting. The exemption does not encompass the renting of rooms in hotels, the renting of rooms for less than a month, the letting of camping lots, parking lots and space for commercial advertising, or the renting of storage boxes.

(ix) The supply of real property. The exemption does not encompass the delivery of new buildings (with or without adjacent land) or the supply of a building land irrespective of whether such land is ready for development, nor does the exemption encompass the supply of land on which a building is erected. "New buildings" are completed buildings not yet in use and buildings that are in use and first delivered within five years from completion.

(x) Insurance and reinsurance businesses including activities undertaken by insurance brokers.

(xi) The following financial activities:

- The granting and negotiation of credit and the management of credit by the person granting it;
- The negotiation of, or any dealing in, credit guarantees or any other security for money and the management of credit guarantees by the person granting the credit;
- Transactions, including negotiation, with respect to deposit and current accounts, payments, transfers, debts, checks and other negotiable instruments, but excluding debt collection;
- Transactions, including negotiation, with respect to currency, bank notes and coins used as legal tender, with the exception of collectors' items;
- Transactions, including negotiation, but excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities, excluding documents establishing title to goods and documents establishing rights of ownership or possession over immovable property or a part thereof; and
- The management of special investment funds.

(xii) Betting, lotteries and gambling.

(xiii) Postal services and goods supplied in connection with such services by postal businesses that have undertaken the obligation to make postal deliveries wholly or partly. The exemption only applies to services and goods connected with the obligation to make postal supplies.

(xiv) Postage stamps.

(xv) Personal transportation. The exemption does not encompass the commercial transportation of passengers other than by scheduled bus services. In connection with transportation abroad or back to Denmark, the exemption encompasses the transportation of luggage and means of transportation.

(xvi) Services rendered in direct relation to funerals.

(xvii) Events arranged by charities. An application for exemption must be filed prior to the event concerned.

[242] In 2023, the Danish National Tax Board published binding ruling SKM.2023.329.SR on the treatment of VAT in relation to the sale of crypto art as well as hiring out crypto art to exhibitions. The National Tax Board found that the crypto art constitutes the artist's artistic achievement, therefore, the payment should be VAT-exempt. Further, the National Tax Board found that no payroll duty should be levied on the sale or the hiring out of the crypto artwork.

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(xviii) Goods supplied by second-hand shops if the proceeds are used entirely for charitable purposes, the goods sold were acquired for no consideration, and the employees work on a voluntary basis without receiving any salary.

(xix) The supply of services by an independent group of persons that carry on an activity that is VAT-exempt or in relation to which they are not taxable persons, for purposes of rendering its members the services directly necessary for the exercise of that activity, where the group merely claims from its members exact reimbursement of their share of the joint expenses, provided the exemption is not likely to cause distortion of competition. The exemption is not available in relation to VAT-exempt financial services.

(xx) The delivery of investment gold, documents establishing rights over such gold and the activities of intermediaries acting on another person's account in facilitating such transactions.

(xxi) The supply of services or goods, by organizations whose activities are exempt in connection with events organized exclusively for their own benefit, provided the exemption is not likely to cause distortion of competition.

(xxii) Non-commercial activities of public radio and television undertakings.

Generally, supplies of goods that have solely been applied for the above VAT-exempt deliveries and that did not qualify for a VAT deduction on purchase may also be delivered free of VAT.

6. *Zero-rated Supplies*

Certain supplies fall within the scope of VAT and are non-exempt but are subject to a zero-rate VAT. A key difference between zero-rated supplies and exempt supplies is that zero-rated supplies qualify for the deduction of related input VAT, while VAT-exempt supplies do not.

VAT supplies that are zero-rated are listed exhaustively in Section 34 of the VAT Act and are as follows:

(i) The supply of goods dispatched or transported to a destination in another EU Member State by or on behalf of the vendor, provided the purchaser is registered for VAT purposes in another EU Member State;

(ii) The supply of new means of transport, dispatched or transported to the purchaser by or on behalf of the vendor or the purchaser to another EU Member State;

(iii) The supply of goods subject to excise duty dispatched or transported to the purchaser by or on behalf of the vendor or the purchaser to another EU Member State, provided the goods are subject to excise duty in the country of destination;

(iv) The transfer of its own goods by a business to another EU Member State for its own commercial use in that other EU Member State;

(v) The supply of goods dispatched or transported to a destination outside the territory of the European Union on behalf of a purchaser not established in Denmark;

(vi) The supply of services consisting of work on movable property acquired or imported for purposes of undergoing such work in Denmark, if dispatched or transported out of Denmark by the person providing the services or by his or her customer that is not established within Denmark or on behalf of either of them;

(vii) The supply, modification, repair, maintenance, chartering and hiring of sea-going vessels and the supply, hiring, repair and maintenance of equipment — including fishing equipment — incorporated or used on such vessels;

(viii) The supply of services, other than those referred to above under (vii), to meet the direct needs of seagoing vessels or their cargo;

(ix) The supply of goods for the fueling and provisioning of vessels used for navigation on the high seas and carrying passengers for reward, for purposes of commercial, industrial or fishing activities, or for sale to passengers in accordance with the Customs Act;

(x) The supply, modification, repair, maintenance, chartering and hiring of aircraft used by airlines operating for reward chiefly on international routes, and the supply, hiring, repair and maintenance of equipment incorporated or used in such aircraft;

(xi) The supply of services for aircraft referred to above under (x) and their cargo;

(xii) The supply of goods for the fueling and provisioning of aircraft referred to above under (x);

(xiii) The supply, modification, repair, maintenance, chartering and hiring of aircraft used by state institutions, and the supply, hiring, repair and maintenance of equipment incorporated or used in such aircraft;

(xiv) The supply of goods and services to diplomatic representations, certain public or international organizations as well as certain EU and North Atlantic Treaty Organization (NATO) institutions and forces;

(xv) The supply of gold to the National Bank of Denmark;

(xvi) The supply of services including transport and ancillary transactions if directly linked to the transit or the export of goods outside the European Union, or to the import of goods benefiting from the rules applicable to customs warehouses;

(xvii) The supply of services by brokers and other intermediaries, acting in the name and for account of another person, where they form part of transactions referred to in Section 34 of the VAT Act, or of transactions carried out outside the European Union;

(xviii) The supply of newspapers that are published on a monthly basis;

(xix) The delivery of goods destined for a customs procedure stored temporarily or destined for storage at Copenhagen free port or another bonded warehouse, as well as goods for inward processing;

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(xx) The delivery of goods kept in customs warehouses on which customs duties have not yet been levied; and

(xxi) The delivery of goods destined for a bonded warehouse, and services and goods rendered and delivered in connection with such goods.

As a response to the COVID-19 pandemic, certain provisions were introduced that enable the European Union, and certain EU bodies and agencies, to import and purchase certain goods and services free of VAT that are earmarked for certain tasks assigned to them as part of combatting COVID-19 and are not applied for different purposes.[243]

7. Invoices and Registration

The VAT Act lays down a number of requirements as to the information that must be contained in an invoice; in particular the VAT number of the seller must always be stated, as well as the rate at which VAT is charged. If the supply is made to a customer in another EU Member State, the VAT number of the customer must be stated on the invoice, as well as whether the supply is made applying the reverse charge rules. Invoices sent as a pdf attachment are acceptable.

VAT is reported via the DTA's online platform.

Suppliers are required to register for VAT if their taxable turnover with respect to deliveries made in Denmark exceeds DKK 50,000 per calendar year. If a registered supplier reports no transactions subject to VAT for a consecutive 12-month period, or if it is proven that his or her registration was obtained based on a false or erroneous factual background, the tax authorities may label such registration as "inactive" in the on-line VAT registration verification system.[244] A foreign business that is not established in Denmark must register for VAT purposes regardless of the amount of its turnover in Denmark.

The registration requirement does not apply to a foreign taxable person undertaking supplies for which the Danish customer is liable to account for VAT under the reverse charge mechanism. This exemption applies only if the foreign supplier is not established in Denmark.

Up until June 30, 2021, a foreign business was required to register for VAT in Denmark when supplying goods from another EU Member State to private individuals in Denmark if the value of such sales exceeded EUR 280,000 (distance sales of goods). Consequently, the supplier would have had to levy Danish VAT on such supplies. The distance selling threshold was individually determined by each EU country.

As of July 1, 2021, the individually determined distance selling threshold was replaced by a uniform EU-wide distance sales threshold of EUR 10,000 per calendar year, which takes into consideration all sales of goods and certain services (electronically supplied services, including telecommunications services and radio and TV broadcasting services) within the EU territory excluding the seller's country of establishment. Consequently, if a foreign business has reached this threshold, it must as a point of departure register for VAT in Denmark and levy Danish VAT on its supplies to private individuals in Denmark. However, the foreign business may register for the Union One-Stop Shop (Union OSS) or the Non-Union One-Stop Shop (Non-Union OSS), which will allow the business to register, declare and pay VAT in only one EU Member State.

As of July 1, 2021, suppliers can use the new Union OSS to comply with their obligations pertaining to EU e-commerce sales to consumers and EU sales of goods. The Union OSS is an electronic portal that simplifies up to 95% of the VAT obligations of e-commerce sellers.

The portal allows such sellers to: (i) register for VAT electronically in a single EU Member State for all intra-EU distance sales of goods and for business-to-consumer (B2C) service supplies; (ii) report and pay VAT due on all supplies of services and goods by using a single electronic quarterly return; and (iii) cooperate with the tax authorities of their respective Member State of residence in the language of that country, irrespective of whether they are engaged in cross-border sales.

The new Union OSS can be used by three categories of users, namely, (i) suppliers established in the EU, (ii) suppliers not established in the EU, and (iii) electronic surfaces established in or outside the EU that facilitate supplies of goods.

Suppliers established in the EU may use the Union OSS in relation to their distance sales of goods within the EU or for supplies of B2C services that take place in EU Member States in which they are not established.

Suppliers that are not established in the EU can only use the Union OSS for distance sales of goods within the territory of the EU. For supplies of B2C services that take place in EU countries, suppliers that are not established in the EU can use the non-Union OSS scheme as described below.

Providers of electronic services (irrespective of whether they are established in the EU) that facilitate supplies of goods can use the Union OSS for certain domestic supplies of goods and distance sales of goods within the EU.

As of July 1, 2021, a non-Union OSS scheme can be used by e-commerce sellers that are not established in the EU. All B2C supplies of services made by such sellers that take place in the EU are covered by the non-Union OSS. Examples of supplies of services to customers (a non-exhaustive list) that could be reported under the non-Union scheme are accommodation services provided by non-established taxable persons; admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events such as fairs and exhibitions; transport services; services of valuation and work on movable tangible property; ancillary transport activities such as loading, unloading, handling or similar activities; services connected to immovable property; hiring of means of transport; supply of restaurant and catering services for consumption on board ships, aircraft or trains; etc.

When the OSS system is chosen, it must be used to declare all eligible supplies under the OSS.

If a supplier registers for VAT under the OSS schemes, its supplies will be subject to VAT at the rate applicable in the EU Member State where the services are supplied. Consequently, supplies made to Danish private individuals are subject to VAT at the Danish rate of 25% regardless of whether Denmark is chosen as the country of registration.

VAT registration is available on a voluntary basis for the letting of real property used for commercial purposes. This allows the VAT registered lessor to levy VAT on the rent charged

[243] Introduced through Act No. 2616 of December 28, 2021.
[244] Implemented through Executive Order No. 982 of June 23, 2022.

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and deduct input VAT on supplies applied to the real property in question. VAT registration is not available for the letting or subletting of real property for residential purposes.

All applications for VAT registration as well as amendments to existing VAT registrations are filed via the Danish Business Agency's on-line platform.

8. Requirements for Payment Providers

In an effort to combat VAT fraud, as of January 1, 2024, provisions take effect in the VAT Act that implement Council (EU) Directive 2020/284 regarding certain requirements for payment providers.[245]

The new provisions mirror the definitions of Directive 2020/284 and require payment service providers to create and maintain a register of their payers and payees in case of certain cross-border payments for a three-year period and to make it available to the tax authorities upon request.

A payment service provider is covered by the rules where it provides payment services in connection with more than 25 cross-border payments to the same payee in a single calendar quarter.

Failure to comply with the provisions is subject to fines.

F. Payroll Duty

Payroll duty is imposed under the Act on Payroll Duty.[246] The duty only applies to enterprises supplying goods and services that are VAT-exempt under the VAT Act. The duty also applies to other enterprises undertaking certain economic activities involving the provision of services that are not subject to VAT.[247]

The most significant field of application of payroll duty is the provision of financial services. Payroll duty consequently applies to service providers within the fields of insurance, banking, pension services and the management of investment funds, as well as activities involving the trading of commercial paper and/or currencies.

Payroll duty also applies to certain health and medical services (such as those provided by dentists), gambling activities and the delivery of newspapers, as well as certain transport services and funeral services (the list is non-exhaustive).

The calculation of the tax base depends on the activities in question, as follows:

(i) For businesses engaged in financial services, the tax base is the sum of the salaries of the employees engaged in the activities in question. The duty is levied at the rate of 15.3% in 2022 and 2023 and subsequent years.

(ii) For businesses engaged in lotteries and gambling activities, the tax base is calculated as the sum of the salaries of the employees engaged in the activities in question. The duty is levied at the rate of 6.37% of the sales tax base (2024).

(iii) For businesses engaged in importing or publishing newspapers, the tax base is the sales price of the newspapers sold or distributed (including electronically distributed newspapers). The duty is levied at the rate of 3.54% of the tax base (2024).

(iv) For other services encompassed by payroll duty, the taxable base is determined as the sum of the salaries of the employees engaged in the activities in question plus the taxable profits, minus the losses from the activities in question. For this purpose, profits or losses from activities carried on abroad are disregarded. The duty is levied at the rate of 4.12% of the tax base (2024).

An enterprise must register for payroll duty if its tax base exceeds DKK 80,000 annually. All applications for registration, as well as amendments to existing registrations, are filed via the Danish Business Agency's on-line platform.

G. Capital Investment Tax

No capital investment tax is levied on the formation of a company.

H. Trade Tax

No special tax is levied on trade or business apart from ordinary income tax.

I. Wealth Tax

The net worth tax was abolished with effect from January 1, 1997. There is no other wealth tax currently in force.

J. Oil and Gas Tax

1. In General

Pursuant to a special provision in the Hydrocarbon Tax Act,[248] companies participating in oil and gas exploration activities in Denmark, including offshore activities, are subject to tax on income derived from such activities. It should be noted, however, that taxation under the Hydrocarbon Tax Act may be reduced or eliminated altogether under the terms of certain tax treaties Denmark has entered into and further the extended tax liability of the hydrocarbon tax does not apply to income derived from related business activities or work performed abroad.

The Hydrocarbon Tax Act provides for a two-tier system of taxation. A company or an individual is subject to ordinary income tax on income connected with activities in Denmark, including oil or gas related activities. If the company or individual has income in connection with the extraction of hydrocarbons or income fixed as a share of hydrocarbons extracted, this income will also be subject to the special hydrocarbon tax at the rate of 52%, in addition to the standard corporate income tax of 22%.

2. Scope of Tax

Income from preliminary surveys, exploration and the extraction of hydrocarbons, and any related activity (including the installation of pipelines, supply services and the transportation

[245] Act No.755 of June 13, 2023.

[246] Consolidated Act No. 2729 of December 12, 2021, the Act on Payroll Duty (*Afgift af lønsum*).

[247] See also above regarding the ruling SKM.2023.329.SR on crypto art.

[248] Consolidated Act No. 1820 of September 16, 2021, the Act on Hydrocarbon Taxation (*Kulbrinteskatteloven* or HTA), as amended.

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by ship and pipeline of hydrocarbons extracted) carried on in one of the following areas is subject to Danish tax liability:

(i) In Denmark, including its territorial waters and continental shelf area;

(ii) In any foreign country, including the territorial waters and the continental shelf area of any such foreign country in the case of hydrocarbons that are situated both in an area referred to above in (i) and in the foreign country, provided the extraction is wholly or in part subject to Danish sovereignty under an agreement with the foreign country concerned; or

(iii) Outside the areas referred to above in (i), in the case of the pipeline transportation of hydrocarbons that were extracted in an area referred to above in (i) or (ii), provided Denmark is entitled to impose taxes under an agreement with the foreign country concerned.[249]

Under the Hydrocarbon Tax Act, the following are assessed separately for income tax purposes:[250]

(i) Income from the first sale of hydrocarbons extracted;

(ii) Income fixed as a share of hydrocarbons extracted or the value of hydrocarbons extracted;

(iii) Profits or losses from the direct or indirect relinquishment of a concession, license or right to carry out preliminary surveys to explore for or extract hydrocarbons;

(iv) Gains and losses realized on the termination of taxable activities in connection with hydrocarbons on the disposal of equipment, vessels and buildings used in connection with preliminary surveys and exploration;

(v) Recaptured depreciation realized on assets used in connection with preliminary surveys and exploration; and

(vi) Financial income directly linked to hydrocarbon activities.

The income tax must be calculated in accordance with the general provisions of the relevant Danish tax legislation subject to the special measures set out in the Hydrocarbon Tax Act to be applied in calculating different kinds of income and expenditure.[251]

Profit and losses for purposes of (iii), above, consist of the difference between the consideration received on relinquishment and the initial expenditure less depreciation of concessions, and licenses to preliminary surveys, exploration and the extraction of hydrocarbons.[252] Such items may be depreciated in equal amounts over the number of years during which the rights remain in force.[253]

If the acquirer of the rights incurs expenditure as a consequence of preliminary surveys that should have been paid by the taxpayer selling the rights under the license transferred, any taxable gain will be recognized for tax purposes as and when the expenditures is incurred, but no later than in the third year after the sale.[254] This provision does not apply to group companies as defined in Section 2 of the Tax Assessment Act.

Special transfer pricing provisions apply.[255] The arm's-length principle applies not only among related parties but also among parties cooperating in the exploitation of a concession license. Two parties are generally considered related parties if one party controls more than 50% of the share capital or votes of the other party.

In determining the income subject to separate assessment, expenses incurred in connection with preliminary surveys and exploration relating to the extraction of hydrocarbons may be deducted for income tax purposes. If such expenses were incurred prior to the taxpayer initiating extraction from a field, the taxpayer may elect to deduct the amount at the annual rate of 20%, the first deduction being made in the income year in which extraction begins.[256] If the taxpayer terminates its activities or a license is revoked, the expenditures may be deducted in the year in which the activities are terminated or the license is revoked.[257] Further, expenditure incurred in connection with the demolition and removal platforms and other installations may be deducted, even if the extraction of hydrocarbons has ceased.[258] Expenses paid for the establishment of a pipeline cannot be deducted to the extent the amount is related to income taxed under Chapter 3 A of the Hydrocarbon Tax Act. For further detail on Chapter 3 A, see IV.J.4., below.

Under the Hydrocarbon Tax Act, the Ministry of Taxation may decide, following negotiations with the Ministry of Industry, that norm prices for extracted hydrocarbons are to be applied for purposes of determining taxable income. The norm price corresponds to the market price obtainable in trading between independent parties under unrestricted conditions.[259]

In calculating the tax, expenditure incurred on exploration in connection with the extraction of hydrocarbons may be deducted. Expenditure incurred before extraction takes place may be capitalized and deducted over a period of five years at the rate of 20% a year.[260] The first deduction may be taken in the taxable year in which the extraction of hydrocarbons commences.

Expenditure on machinery, equipment and similar working plant, ships and buildings used in connection with preliminary surveys and exploration activities is depreciated in accordance with the Act on Tax Depreciation.[261] Drilling rigs may be depreciated using the declining balance method at the rate of up to 25% per annum.[262]

The Hydrocarbon Tax Act applies a "ring fence" principle for purposes of calculating income tax, i.e., losses from other activities are not deductible from income subject to hydrocarbon tax.

Losses under the Hydrocarbon Tax Act may be carried forward indefinitely and set off against other income from hydro-

[249] HTA, Sec. 1.
[250] HTA, Sec. 4.
[251] HTA, Sec. 1.2.
[252] HTA, Sec. 4.3.
[253] HTA, Sec. 9.
[254] HTA, Sec. 4.3.
[255] HTA, Sec. 6A.
[256] HTA, Sec. 7.
[257] HTA, Sec. 7.2.
[258] HTA, Sec. 10A.
[259] HTA, Sec. 5.
[260] HTA, Sec. 7.
[261] Act No. 242 of February 18, 2021, as amended.
[262] HTA, Secs. 7.3 and 8.

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carbon activities or income from other sources.[263] Losses incurred in connection with the dismantling of platforms, pipes and other facilities may also be deducted for income tax purposes for years when the extraction of hydrocarbons has ceased.[264]

3. Calculation of Tax

Hydrocarbon tax is determined in accordance with the general rules of Danish tax legislation, subject to the special provisions set out in the Hydrocarbon Tax Act.

4. Special Rules for Assessment

Under Chapter 3A of the Hydrocarbon Tax Act, a taxpayer is assessed for hydrocarbon taxation purposes for the first time in the year in which preliminary surveys and exploration are conducted. Taxable income is computed in accordance with the rules described in 1., above, as modified by the provisions contained in Sections 20C to 20E of the Hydrocarbon Tax Act. Hydrocarbon tax amounts to 52% of taxable income. There is a special hydrocarbon allowance of 5% per year of investment in production facilities, platforms and other equipment including pipelines and other facilities used in connection with the generation of income subject to separate assessment as indicated in Section 4 of the Hydrocarbon Tax Act. The allowance may be deducted from income subject to hydrocarbon tax and is granted for a period of five years from the year in which provision for depreciation of the asset concerned was made for the first time.[265]

An additional hydrocarbon allowance of 5% of expenditure on preliminary surveys and exploration is also available and may be deducted over a period of five years.[266] This hydrocarbon allowance is granted in the accounting year in which the deduction arrangement for exploration expenses is initiated and in each of the five subsequent accounting years. If the taxpayer disposes of assets that are included in the basis on which the hydrocarbon allowance is claimed, the hydrocarbon allowance is reduced, in the year of disposition, by an amount equal to the proceeds.

Under Section 20D of the Hydrocarbon Tax Act, ordinary corporate income tax paid may be deducted for purposes of calculating the hydrocarbon tax.

Tax losses may be carried forward indefinitely.[267] Losses from other kinds of income cannot be set off against income subject to hydrocarbon taxation. If a taxpayer ceases to carry on business in connection with a license, it may carry back any unused tax losses. The tax value of the losses will be paid by the DTA. The repayment cannot, however, exceed the hydrocarbon tax paid by the taxpayer under Chapter 3A of the Hydrocarbon Tax Act. The amount is determined before a reduction for any fees paid for the use of pipelines. The repayment is not taxable. Chapter 3A also contains provisions concerning the establishment of the taxable basis for taxpayers electing to be taxed in accordance with Chapter 3A.

[263] HTA, Sec. 11.
[264] HTA, Sec. 10A.
[265] HTA, Sec. 20C.1.
[266] HTA, Sec. 20C.2.
[267] HTA, Sec. 20E.1.

Chapter 3B sets forth detailed and very complex rules providing tax incentives to invest further in the Danish part of the North Sea. These rules apply to investments made up until 2025. To counter the benefit of these rules, a windfall tax will be triggered if oil prices exceed US$75 (2017-level) per barrel (Brent) on average for the applicable income year. In this case, the surtax rate is 5%. If the average price exceeds US$85 (2017-level) per barrel, the surtax rate is 10%. The surtax is also calculated according to detailed and complex rules and may be deducted from the hydrocarbon tax payable. The surtax is payable for income years 2022 through 2037.

5. Application to Individuals

Individuals who participate in oil and gas exploration activities in Denmark, including offshore activities, and who are not otherwise subject to Danish income tax are taxed on their income from such activities at a flat rate of 30% on their gross remuneration, in addition to the 8% labor market tax.[268] No deductions are allowed. However, taxation may be reduced pursuant to certain tax treaties Denmark has entered into.

6. Energy Windfall Profits Tax

In response to EU Council Regulation 2022/1854, authorizing an emergency intervention to address the high cost of energy in the European Union, Denmark introduced a temporary solidarity contribution scheme.[269] The scheme, basically, levied a 33% tax on the corporate tax base, determined as the taxable profits of the company reduced by its average taxable profits for the preceding four years, plus 20%. The tax applied to energy companies that were subject to the Hydrocarbon Tax Act or the Corporations Tax Act and that had a taxable turnover of income for 2023 of which at least 75% was derived from hydrocarbon extraction or refining activities. This scheme was discontinued as from income year 2024.

K. Other Taxes

1. Real Property

There are various taxes on real property in Denmark:

(i) Municipal real property tax on the value of land;

(ii) Municipal business real property tax; and

(iii) State property value tax on residential dwellings.

The tax on real property is levied based on an annual public assessment of the value of the real property concerned. The public assessment comprises a valuation of land and buildings. As the Danish public valuation scheme was widely considered to render inaccurate property valuations, a new public property valuation scheme was introduced in 2018 that is expected to render more accurate property valuations going forward. The first valuations under the new scheme were published in 2021 for residential dwellings (for the valuation year 2020) and in 2023 for business properties (for the valuation year 2023). Property taxes are generally payable in the year following the year in which the valuation was made.

[268] HTA, Sec. 21.2.
[269] Act No. 502 of May 17, 2023 implementing EU Council Regulation 2022/1854.

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The new public valuations are generally considered to lead to an increase in the public valuation, especially in and around the larger cities, although a precautionary principle applies so that the taxable basis is reduced by 20% to take into account the general natural uncertainty associated with determining the market value of real property.[270] Furthermore, transitional rules apply that seek to mitigate the immediate tax effects of the new valuations.

For the municipal real property tax, the taxable base is the fair market value of the land concerned (i.e., not buildings). The rate of the municipal real property tax varies considerably from one municipality to another, but it cannot exceed a statutory rate of 3% per year of the public assessment value of the land. Over calendar years 2024 to 2028, the municipalities are not allowed to increase the municipal real property tax rate.[271]

For the municipal business real property tax purposes, the taxable base is, effective from 2022, the fair market value of the land. Only property used for business or industrial purposes is subject to municipal business real property tax.[272] The rate of tax may vary from one municipality to another but cannot exceed a statutory rate of 1.8% per year of the total assessed land value.[273]

State property value tax amounts to 0.51% of the publicly assessed value of a residential dwelling up to DKK 9,200,000 and 1.4% of any amount in excess of that amount.[274] If the property was acquired prior to July 1, 1998, the property value tax rate will be reduced by an amount equivalent to 0.1% of the taxable basis.[275] Special provisions apply to farms.

In the case of individuals resident in Denmark for tax purposes, state property value tax also applies to residential dwellings located abroad.

2. Motor Vehicles

A tax based on the consumption of fuel is levied on cars registered after July 1, 1997. The consumption is determined using an EU standard set out in Directive 80/1268/EEC. An annual weight tax is levied on cars registered before July 1, 1997.

The taxable amounts are calculated based on the consumption of either petrol or diesel per kilometer driven, the tax being highest for the least economic cars.

For a discussion of the vehicle registration tax, which is the single greatest revenue-generating excise duty in Denmark, see IV.K.5., below.

3. Energy Products

Energy products such as electricity, coal, gas, and fuels are subject to excise duty. As these duties are harmonized at EU-level, Danish taxation is imposed in compliance with, *inter alia*, Council Directive 2003/96/EC of October 27, 2003, on the framework for the taxation of energy products (the "Energy Tax Directive") and Council Directive 2020/262/EC of December 19, 2019, concerning the general arrangements for excise duty (the "General Excise Directive"). For further information on the legislative framework governing EU harmonized excise duties, see 7450 T.M., *Business Operations in the European Union — Taxation*, chapter XIX. European Union Secondary Legislation — Excise Duties.

Duty is levied at the producer, importer or distributor level and entities undertaking the relevant activities are subject to mandatory registration.

Duties vary for individual products. Unleaded gas for automobiles is taxed at the rate of DKK 4.499/liter, electricity applied towards the heating of private homes at DKK 0.8/kWh (2024) and natural gas at DKK 2.726 per normal cubic meter (2024).

Duties are usually passed on to the purchaser of the products. VAT-registered commercial consumers can, to a certain extent, recover the taxes through a reduction of the amount payable on their VAT returns.

Full recovery (except for a minimum charge) is generally available for duties on energy products consumed in the course of actual production and manufacturing, whereas duty on goods consumed for purposes similar to private "domestic" consumption in the form of room heating/cooling is subject to limited recovery.

A special "excess heat tax" applies where excess heat from processes that are eligible for full duty recovery (for example, manufacturing processes) is applied for purposes subject to limited recovery (for example, room heating). The tax is levied as a reduction of the amount of duty recoverable. The excess heat tax has been abolished in respect of electricity. For natural gas the applicable rate is DKK 28.2 per gigajoule (2024). An energy efficiency scheme is currently in force, under which — subject to the application and approval from the Danish Ministry for Climate Energy and Utilities — the excess heat may be tax exempt for qualifying taxable entities.

4. Stamp Duty

a. Insurance

Denmark levies stamp duty on certain insurance policies including damage insurance and insurance of yachts and pleasure crafts. Under the Danish Act on the Taxation of Damage Insurance,[276] an insurance policy is subject to the duty if: (i) the insurance agreement is entered into in Denmark; (ii) the indemnity insurance covers risks in Denmark, irrespective of where the insurance is taken out; and (iii) the parties are residents of Denmark, unless no part of the premium is payable in Denmark. If the risk is placed in another European Economic Area (EEA) country, no stamp duty is payable in Denmark irrespective of the place where the insurance agreement is entered into.

The term "insurance against loss and damages" is defined in accordance with the Act on Financial Business.[277] Insurance against loss and damages is an agreement under which an insurance company undertakes the economic risk for the occurrence of an uncertain event. The Act exempts a number of types of insurance from the duty, as follows:

[270] Consolidated Act. No. 678 of June 3, 2023, the Danish Property Tax Act (*Ejendomsskatteloven* or DPTA), Secs. 13.2 and 17.2.
[271] DPTA, Sec. 28.
[272] DPTA, Sec. 12.
[273] DPTA, Sec. 29.2 and 29.3.
[274] DPTA, Sec. 22.2.
[275] DPTA, Sec. 23.
[276] Consolidated Act No. 1880 of December 9, 2020, the Act on the Taxation of Damage Insurance (*Skadesforsikringsafgiftsloven*), as amended.
[277] Consolidated Act No. 406 of March 29, 2022, the Act on Financial Business (*Lov om finansiel virksomhed*), as amended.

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(i) Insurance taken out by a mutual insurance company not subject to supervision by the authorities;

(ii) Insurance taken out in accordance with the law on workmen's compensation;

(iii) Marine and transport insurance, and aviation insurance;

(iv) Credit and indemnity insurance;

(v) Mutual insurance contracts; and

(vi) Mandatory indemnity insurance taken out under the Road Traffic Act.

Under the Act on the Taxation of Damage Insurance, the duty amounts to 1.1% of the premium payable for the insurance. The premium is defined as the consideration received by the insurance company, whether in cash or in kind.

The insurance company is liable for the payment of the duty and an insurance company established outside the European Union must appoint a representative resident in Denmark, unless the company is established in a country that has concluded an agreement with Denmark for mutual assistance in line with the EU rules.

Under the Act on Taxation of Yacht Insurance, an insurance policy is subject to duty if taken out on a yacht or any other kind of other craft, unless the craft is used purely for commercial purposes such as the transportation of goods or passengers or the provision of services against remuneration, or for public purposes.

The duty is levied annually on the insurance company at the rate of 1% of the insurance sum.

b. Real Property and Aircraft

The registration of the sale or mortgaging of real property and ships is subject to registration duty. Registration duty is imposed on:

(i) Deeds of transfer of real property: 0.6% (2024) of the purchase price;

(ii) Deeds of transfer and mortgages regarding aircraft are subject to registration duty: for deeds, the registration duty is 0.1% (2024), and for mortgages, the registration duty is 0.1% (2024) for aircraft that weigh more than 5,700 kg or are registered to carry more than 10 passengers and 1.5% (2024) for aircraft that weigh 5,700 kilos or less or are registered to carry a maximum of 10 passengers;

(iii) Mortgages, deeds and loan agreements secured by real property or automobiles: 1.5% of the amount of the mortgage, etc. Special rules apply with respect to cooperative housing, where a lower rate of 1.45% and a (reduced) fee of DKK 1,825 may be applicable.

A handling fee of DKK 1,850 (2024) is payable when any of the documents referred to above are registered. The fee is payable with respect to each individual document.

5. Motor Vehicle Registration

A registration tax is levied on the cost price of cars, on mandatory registration in the Danish vehicle register.

The motor vehicle registration tax, payable on passenger cars, is 25% of the cost price (including VAT) up to DKK 70,200 (2024); 85% of the cost price (including VAT) exceeding DKK 70,200 and up to DKK 218,100 (2024), and 150% of the cost price exceeding DKK 218,100 (2024).

For motorbikes, the tax is 25% of the cost price (including VAT) up to DKK 21,600 (2024), 85% of the cost price (including VAT) exceeding DKK 21,600 and up to DKK 73,300 (2024), and 150% of the cost price exceeding DKK 73,300 (2024).

For vans and lorries with a weight of up to 4,000 kg, the tax is DKK 0 on the cost price (including VAT) up to DKK 80,900 and 50% of the cost price (including VAT) exceeding DKK 80,900 (2024). Lorries with a weight exceeding 4,000 kg are generally exempt from registration tax.

a. Zero-Emission Vehicles

For electric cars with zero-emissions, a deduction from the taxable value at DKK 500 per kWh of battery capacity used for propulsion is granted, up to a maximum of 45 kWh. The deduction is written down annually and will lapse as from 2025.

For zero-emission vehicles comprising zero-emission cars or electric or fuel-cell powered motorbikes, the tax is calculated according to the general rules applicable to private cars, motorbikes, vans and buses. However, only 40% of the calculated tax will be payable if the vehicle is registered before 2026. The percentage of the registration tax rate then increases by eight percentage points each year to 80% by 2030, and by four percentage points each year until 2035, reaching 100% in 2035.

In addition, a special basic deduction is granted for the calculated tax on zero-emission vehicles. For registrations made in 2022, zero-emission private cars are subject to a deduction of DKK 165,000. Zero-emission vans are subject to a basic deduction of DKK 77,500 (2024), while the deduction for electric and fuel-cell powered motorbikes amounts to DKK 104,000 (2024). The deduction was supposed to be written down annually to DKK 162,500 (2024), DKK 160,000 (2025), DKK 155,400 (2026), DKK 150,800 (2027), DKK 146,200 (2028), DKK 141,600 (2029) and DKK 137,000 (from 2030). However, as from February 1, 2024, the deduction for 2024 and 2025 was increased to the 2023 level.

b. Low-Emission Cars

For cars that emit less than 50g CO_2 per km (largely plug-in, hybrid electric cars), the tax is calculated according to the general rules applicable to private cars, motorbikes, vans and buses. However, only 60% of the calculated tax will be payable if the vehicle is registered in 2024 and 65% in 2025. After this, the tax is phased in at three percentage points per year until 2030, after which it is phased in at four percentage points per year reaching 100% in 2035.

For registrations made in 2024, low-emission cars are subject to a deduction of DKK 46,250 from the vehicle registration tax. The deduction is written down annually to DKK 45,000 (2025), DKK 43,000 (2026), DKK 41,000 (2027), DKK 39,000 (2028), DKK 37,000 (2029) and DKK 35,000 (from 2030).

For low-emission cars, a special deduction from the taxable value of DKK 500 per kWh of battery capacity used for propulsion is granted, up to a maximum of 45 kWh. The deduction is written down annually and will lapse from 2025.

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6. Share Transfers

A stock exchange transfer tax was abolished for transfers of shares made on or after October 1, 1999.[278]

7. Environmental Taxes

a. Nitrogen Oxide Emissions

Denmark imposes a regime of taxation on a wide array of sources that are deemed detrimental to the environment. These taxes include taxes on emissions of certain substances such as NO_x (nitrogen oxide), carbon dioxide (CO_2) and sulphur, as well as on the incineration of waste.

These taxes are, to a certain extent, unrecoverable and are of significance to industrial emitters.

The NO_x Taxation Act imposes an obligation to measure automatically and levy duty on emissions of nitrogen oxides and nitrogen oxide equivalents from, *inter alia,* energy plants with a thermal effect exceeding 30 mw, waste incineration plants and certain large industrial plants. Where measuring is not possible, the emissions are calculated based on tables of NO_x emissions based on the fuels consumed as listed in the NO_x Taxation Act.

The tax is levied at the rate of DKK 5.8 per kg (2024) of NO_2-equivalents emitted into the atmosphere.

b. Carbon Dioxide Emissions

The CO_2 Taxation Act levies a tax based on the CO_2 content of goods that are also subject to energy taxation. Consequently, CO_2 taxation is levied on mineral oils, coal and gas (and waste) under the individual energy taxation acts. The CO_2 tax is payable by companies subject to registration under these acts.

Tax rates vary depending on the energy product in question: for fuel oil, the tax is DKK 0.620 per kg; for coal, DKK 520.4 per ton; for petrol, DKK 0.470 per liter; and for non-biodegradable waste used as fuel, DKK 195.7 per ton of CO_2 emitted from such combustion (all 2024 rates).

c. Sulphur Content

The Sulphur Tax Act taxes the sulphur content of certain energy products listed in the Act. Sulphur is taxed at the rate of 26.5 DKK pr. kg. (2024) and the tax is levied on the sulphur content in the amount of energy products delivered from taxable, registered companies during a calendar month. Registration is mandatory for companies producing the goods subject to sulphur taxation and available on a voluntary basis to companies with large storage capacities and/or that have implemented certain cleaning measures with respect to their emissions.

d. Airline Passenger Tax

The Danish Parliament has adopted a proposal to levy a passenger tax on commercial flights from Danish airports. The Act enters into force as of January 1, 2025, and will be phased in over 2025 to 2030. The tax is levied only on commercial travel that begins in Denmark; thus, it does not affect travel involving intermediate landings at Danish airports for transit and transfer passengers. The rate of the tax depends on the end destination of the travel, i.e., the length of the flight. It is expected that the tax will on average amount to DKK 70 in 2025 and to DKK 100 on average in 2030. From calendar year 2031, the tax will be index-adjusted annually. Airline companies are liable for the tax and are, therefore, required to register for this tax and report monthly the number of passengers who are subject to the tax by no later than the 15th day following the end of the month.

e. Other Environmental Taxes

Other environmental taxes include taxation of waste in general, chlorofluorocarbons (CFCs), polyvinyl chlorides (PVCs), water and wastewater, light bulbs, and batteries.

8. Alternative Minimum Tax

There is no alternative minimum tax in Denmark.

9. Exit Tax

a. In General

An individual who ceases to be a Danish tax resident as a consequence of emigration or because the individual is deemed resident abroad under a tax treaty is generally deemed to dispose of his or her worldwide assets and liabilities at their fair market value at the moment of cessation of residence. This can lead to taxation of unrealized capital gains (the increase in market value of the individual's assets between entry into and exit from Denmark) on shares, immovable property and debt and debt claims, and a recapture of depreciation on depreciated assets.

Exit taxation does not apply to assets and liabilities that remain subject to Danish tax after an individual has become nonresident, i.e., immovable property located in Denmark and assets and liabilities attributable to a permanent business establishment in Denmark.

Exit tax is generally payable in connection with an individual's departure from Denmark. However, subject to certain conditions, an individual is entitled to defer payment of exit tax if he or she becomes liable to tax in another EU Member State or EEA country, with a rate of 1% added to the official Danish discount rate,[279] which currently adds up to a rate of 4.10%.[280]

If the Danish business taxation scheme has been applied, any profits not previously withdrawn from the business are generally subject to exit tax (marginal tax rate of up to approximately 56%), minus any tax already paid under the business tax scheme.

Special rules apply with respect to pension schemes, real property and securities.

b. Shares and Securities

The exit taxation of gains on shares and securities, debt receivables and payables, and financial instruments may be trig-

[278] Act No. 909 of Dec. 16, 1998.

[279] TSA, Sec. 73 C, no. 8.

[280] See Form 04.065 EN, available at: https://skat.dk/en-us/help/forms/04-tax-tax-return-and-preliminary-income-individuals/04065-en-tax-return-postponed-tax-payments-capital-gain-on-shares-capital-gain-on-securities-and-foreign-currency-at-emigration.

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gered if the tax liability of a taxpayer is terminated,[281] except for termination in the case of death. Such securities held by the taxpayer are deemed sold and any gain or loss realized generally included in the taxable income. The tax is also imposed on a taxpayer who becomes resident of another country under the provisions of a tax treaty.

The rules only apply to taxpayers who hold shares worth more than DKK 100,000, unless the acquisition price for tax purposes is negative.[282] In addition, the taxpayer must have been fully taxable in Denmark for at least seven out of the 10 years before the tax liability is terminated.[283] This rule also applies to shares acquired from a spouse provided the stays of the spouse in Denmark comply with the time limits just described. The rules also apply to shares acquired under the rules concerning succession in the case of the transfer of a business.[284]

The gain is computed in accordance with the ordinary rules for the computation of gains on shares.[285] The value at the time the tax liability is terminated is used for purposes of computing the gain (i.e., is considered to be the disposition price). In the case of options to purchase shares, the taxpayer may elect to calculate the gain as the difference between the exercise price and the market value of the particular shares at the time the tax liability is terminated.

The tax is payable on the resulting gain.[286] A taxpayer may ask to pay the tax in accordance with the tax deferral rules laid down in Section 39 of the Act on Taxation of Gains and Losses on Shares. A request for deferral may only be made if the taxpayer's full tax liability to Denmark is terminated or the taxpayer is deemed resident in another country under an applicable double taxation agreement.[287] Deferral requires that the taxpayer file a tax return together with a listing of the shares at the time the tax liability is terminated.

Deferral will only be granted to a taxpayer who moves to another country other than the Nordic Countries, or a country to which Council Directive 2010/24/EU of March 16, 2010, concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures applies, if security for payment is provided. The security may, for example, take the form of bonds or shares listed on a regulated market.[288] The amount of security should be appropriate, taking the tax payable into consideration. Security must also be provided by a taxpayer who moves from a country where no security can be required to a country where it may be required. Otherwise, the tax is due immediately.

If the tax return and the listing of shares are not filed on a timely basis, the right to deferral is forfeited.[289] The DTA may grant an exception in the case of late filing.[290]

If the taxpayer subsequently sells the shares, the taxable gain or loss must be calculated. The calculation is made for each share as provided under the complex rules under Section 39A of the Act on Taxation of Gains and Losses on Shares. A credit for foreign taxes is available.

If the taxpayer again becomes taxable in Denmark, the rules on exit taxation will no longer apply and the taxpayer will only be taxed if the shares are subsequently sold.

Similar exit tax rules apply with regard to gains and losses on bonds and financial instruments.[291]

Special transitional rules apply with respect to shares acquired before January 1, 2006, provided the taxpayer's holding of shares at December 31, 2005, did not exceed DKK 136,600 (DKK 273,200 if the taxpayer was married). Such a holding is exempt from taxation provided the shares were held for at least three years when sold.[292]

10. Digital Streaming Services Tax

The Danish government announced it intends to introduce a cultural tax on the turnover generated by Danish and EU-based digital streaming and on-demand platforms and services in Denmark on June 14, 2023, when a media agreement concerning the domestic media sector for the period 2023–2026 was published by the Minister of Culture. This resulted in a draft bill published on August 15, 2023, which has been subject to a public hearing procedure. However, due to a procedural error, the legislative process had to restart, and the bill has now been revised, reintroduced and adopted, and the impacted streaming services will be taxed on a retroactive basis effective from January 1, 2024.

The new law introduces a cultural contribution and levy to be paid by providers of streaming services that target a Danish audience. The base levy is 2% of the gross revenue of a media service provider in Denmark, arising from the provider's on-demand audiovisual media supply of films, fictional series and documentary programs, etc. Streaming service providers that invest less than 5% of their gross revenue in Denmark must pay a tax of 3%, in addition to the fixed base contribution of 2%, resulting in a total tax of 5% of their annual turnover. On-demand streaming service providers that invest more than 5% of their gross revenue in Denmark will not have to pay the 3% levy.

The new tax applies to streaming services with an annual revenue exceeding DKK 15 million or if their Danish audience constitutes more than 1% of the total number of users of streaming services in Denmark but does not apply to streaming services offered as part of a public service operation. The streaming services are required to report their annual gross revenues in Denmark that originates from the streaming of movies, film series, etc. (revenue from news and sports programs are exempted) to the Danish Agency for Culture and Palaces (*Slots- og Kulturstyrelsen*) and to submit a statement of the investments made in new Danish content. The reports must be accompanied by an auditor's certification.

Based on the draft legislation, the Ministry of Culture has estimated, with considerable uncertainty, that the cultural levy could result in net revenue of DKK 98 million annually. The revenue is intended to be allocated to the Public Service Fund and film supports programs. The streaming services that pay

[281] TGLS, Sec. 38, and TGLC, Sec. 37.
[282] TGLS, Sec. 38.2.
[283] TGLS, Sec. 38.3.
[284] TGLS, Secs. 34, 35, and 35A.
[285] TGLS, Sec. 38.4.
[286] TGLS, Sec. 38.5.
[287] TGLS, Sec. 39.1.
[288] TGLS, Sec. 39.3.
[289] TGLS, Sec. 39.4.
[290] TGLS, Sec. 39.5.
[291] TGLS, Secs. 37, 38, and TGLC 38A.
[292] TGLS, Sec. 44.

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the cultural contribution will, if certain conditions are met, then have the opportunity to apply for support from these programs to invest in new Danish content.

The intention is that the cultural contribution will be deductible as an operating expense when calculating the taxable income for streaming services with full or limited tax liability in Denmark. The 5% levy is deductible against the Danish corporate income tax of 22% which corresponds to a saving of 22% of the 5% levy, i.e., 1.1%. The net effect after the 5% levy would thus be 3.9%.

Comment: Prior to the adoption of the bill, it was unknown whether the regulations were compliant with the agreement on the two-pillar solution reached by the OECD on October 8, 2021, to remove all unilateral digital services taxes and other relevant similar measures. The Danish Ministry of Taxation, however, has maintained the view that the cultural levy should not conflict with the OECD agreement.

L. OECD Pillar One

There have been no recent developments on Pillar One in Denmark.

M. Global Minimum Tax

1. Minimum Taxation Act

On June 26, 2023, the Ministry of Taxation issued a draft law for public consultation on the implementation of the EU Pillar Two Directive[293] into Danish law. In the draft law, it was stated that the EU Directive would be transposed into Danish law by a new law (the "Minimum Taxation Act") instead of relying on already existing rules. This approach was taken due to the fact that tax basis under the EU Directive is based on IFRS or local GAAP accounting principles, which is not otherwise the case for purposes of the Danish Corporate Income Tax Act. On that basis, it was also noted by the Ministry of Taxation that the Minimum Taxation Act would function independently of existing Danish tax law and that the primary focus of the Act was to mirror the EU Directive text as much as possible, even though potentially this may lead to different interpretations of some terms under the Act as compared to existing Danish tax law. As such, when interpreting the Act, it was also stated that existing interpretations and practices pursuant to Danish tax law will carry limited weight.

The Danish Minimum Taxation Act was subsequently enacted on December 7, 2023, and it entered into force for financial years beginning on or after December 31, 2023.[294]

2. Basic Rules

As expected, the Minimum Taxation Act contains the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR). Furthermore, as the EU Directive also provides EU Member States with the option to implement a Qualified Domestic Top-Up Tax (QDTT), the Ministry of Taxation has made use of this option and, therefore, rules on a Danish DMTT are also included in the Minimum Taxation Act.

a. Qualifying Multinational or Domestic Group

The Minimum Taxation Act applies to members of domestic or multinational groups with an annual consolidated revenue of at least 750 million euros in at least two of the four preceding fiscal years.

b. Income Inclusion Rule

The IIR is the primary rule and can be applied by the jurisdiction of the ultimate parent company. Exceptions apply if the ultimate parent company is domiciled in a jurisdiction that has not introduced a rule corresponding to the IIR or if the ultimate parent company is defined as an "excluded entity." In such case, the rule will instead be applied to an intermediary holding company in the group structure. If the income of a subsidiary within the group is taxed at a rate lower than 15%, the jurisdiction of the qualified parent company will be able to levy a "top-up" tax on the parent company corresponding to the amount of tax that the subsidiary should have paid in order to reach an effective tax rate of 15%.

In order to avoid double taxation for Danish parent companies that are subject to both CFC taxation and taxation under the IIR for the same subsidiary, the Minimum Taxation Act contains rules[295] that allows the CFC taxation to be allocated to the foreign subsidiary, when calculating any tax under the IIR. Certain limitations apply when allocating the CFC taxation with regard to tax on passive income.[296]

c. Undertaxed Profits Rule

The UTPR is a secondary rule and is designed to be utilized in situations where the ultimate parent company of a multinational group is resident in a jurisdiction that has not implemented rules which are similar to the Global Anti-Base Erosion (GloBE) rules and thereby the IIR. A Danish subsidiary of such a group can then be subject to an additional tax to Denmark under the UTPR if the qualifying income of the ultimate parent or other group companies are effectively taxed at a rate below 15%.

d. Qualified Domestic Top-up Tax

The QDTT rule is a domestic tax rule designed in accordance with the EU Pillar Two Directive and OECD guidelines. According to this rule, a Danish group entity that is not effectively taxed at a rate of at least 15% and that is part of a foreign multinational group will be subject to an additional domestic top-up tax in Denmark, so that the total effective tax rate of the Danish entity becomes 15%. As this tax represents a domestic tax rule, the top-up amount will be payable to the Danish tax authority and thereby Denmark, and not the foreign jurisdiction where the group's parent company is otherwise resident.

Purely Danish groups will not be subject to the QDTT rule, but they will instead be subject to the IIR.

Even though the Minimum Taxation Act will function independently from existing Danish tax law, some amendments

[293] Council Directive (EU) 2022/2523 of December 14, 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

[294] Act No. 1535 of December 12, 2023.

[295] Minimum Taxation, section 25, subsection 3.

[296] Minimum Taxation, section 25, subsection 6.

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were made to other rules, in order to secure a certain level of interaction between the Act and existing Danish tax law. For example, this is the case with regard to the Danish CFC rules,[297] where a change was made to section 32, subsection 11 in the CTA, whereby a Danish parent company that is subject to CFC-taxation under the Danish rules, receives a credit against applicable CFC tax for any tax paid by a foreign subsidiary subject to a QDTT rule in that subsidiary's jurisdiction for tax purposes. The change was made in order to avoid double taxation. Also, as discussed above, the Minimum Taxation Act contain rules that aim to avoid double taxation for Danish parent companies under the IIR, if they are also subject to CFC taxation.

Comment: As concerns Denmark's existing framework of tax incentives, as of this writing, there have been no amendments to any incentive for purposes of the GloBE rules.

3. Reporting Obligations

The Ministry of Taxation estimates there are approximately 75 Danish ultimate parent entities that will be subject to information reporting obligations and required to prepare an extended tax return, i.e., the GloBE information return or “GIR”.

Danish entities encompassed by the Minimum Taxation Act must file an extended tax return with the DTA.[298] The tax return must be submitted 15 months after the last day in the reporting year at the latest. However, the first of such tax returns covering the year 2024 must be filed by June 30, 2026, at the latest, in accordance with the OECD Agreed Administrative Guidance from December 2023.

In addition to the filing of the tax return, entities encompassed by the Minimum Taxation Act must give notice to the DTA that they are within scope of the Act and must do so within six months after the reporting year has ended. For entities with the calendar year as the accounting year, the deadline for the first of such notices will as such be by June 30, 2025.

As a starting point, it is the individual group entities that must file the return. However, it is possible to deviate from this by appointing a local entity that is responsible for the submission on behalf of the group.

As of this writing, no template of the extended tax return has been published yet; however, the DTA has informed the public that content of the return will match the content of the return that is published by the OECD. Reference is thus made to resources and guidance from the OECD on this aspect.

If the return is not filed by the deadline, the DTA can assess any extra tax on a discretionary basis. The same holds true if the return is deemed to be inadequate. In addition to this, fines can be issued for non-compliance and in general the Danish rules regarding non-compliance in the area of taxation are applicable.

The statute of limitations for the assessment of any minimum taxation under the Minimum Taxation Act is the sixth year after the expiry of the income year in question, and thus deviates from the regular statute of limitations for tax cases based on the fourth year after the expiry of the income year. The statute of limitations under the Act corresponds to the statute applicable to Danish transfer pricing cases.

4. Transitional Rules

On June 12, 2024, the Danish Minimum Taxation Act was revised,[299] with changes being made to ensure that the law complies with the OECD’s model convention and the administrative guidelines thereunder. The amendments entailed an anti-avoidance rule aimed at the transitional rules, whereby it was possible for a corporation to set its top-up tax to zero based on the group’s country-by-country reporting together with simplified calculation rules, in accordance with the OECD administrative guidelines from December 2023, for the safe harbor rule, that was agreed by the OECD in 2022.

Comment: It is generally expected that the introduction of the Minimum Taxation Act will result in a net positive gain for the Danish state, with a positive effect on state finances of approximately DKK two to three billion.

[297] CTA, Sec. 32.
[298] Minimum Taxation Act, section 54.
[299] Act No. 684 of June 11, 2024.

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V. Taxation of Domestic Corporations

A. What Is a Domestic Corporation?

A domestic corporation is defined as a corporation incorporated in Denmark.[300] Every company, whether a public limited company (*Aktieselskab* or A/S) or a private limited company (*Anpartsselskab* or ApS), must be registered with the Danish Business Authority. A company becomes an independent legal entity on registration. For tax purposes, the place where the central management is located or where the board regularly meets to conduct its business is of no consequence for the residence of a company incorporated in Denmark. Such a corporation is a domestic corporation even if its management is located outside Denmark and even if its board meets in different places outside Denmark.

A foreign registered corporation may be considered to be a domestic corporation if its effective place of management is in Denmark.[301] The place where decisions concerning the day-to-day running of a corporation are made is a determining factor in deciding the place of effective and central management. If the board is in charge of the day-to-day running of the company, the place where the board meets will be of significance. The consideration of issues that are usually decided at the general meeting is not a decisive factor. The mere fact that shareholders are residents of Denmark is, therefore, not a determining factor. If the company is a holding company, whose sole activity is to hold shares in other companies, the place where decisions concerning the running of the company are made will constitute its effective place of management. Denmark's double taxation agreements are generally based on the Organisation for Economic Cooperation and Development (OECD) Model Convention. The Danish provisions concerning the effective and central place of management are construed in accordance with Article 4(3) of the OECD Model.[302]

Full tax liability is further imposed on certain savings institutions, employee investment companies created under Act No. 1284 of December 9, 2014, on employee investment companies (ME), Danish railroads, electricity utilities, municipalities conducting business for the supply of power, water utilities, certain cooperatives, certain mutual insurance companies, certain investment funds, and funds not subject to taxation under the Act on Taxation of Foundations and Certain Associations (*Lov om beskatning af fonde og visse foreninger*).[303]

B. Corporate Income Tax

1. Scope of Taxation

A domestic Danish corporation is taxed on its worldwide income, whether derived in cash or in kind. However, income derived from a permanent establishment (PE) abroad, including the Faroe Islands and Greenland, and foreign real property is generally exempt from Danish corporate income taxation, unless the Danish company has elected to be jointly taxed with its Danish and foreign subsidiaries under the rules on international joint taxation.[304]

The term "permanent establishment" is construed in accordance with Article 6 of the OECD Model Convention. Prices charged between a PE and the head office for goods and services supplied are established by applying ordinary transfer pricing principles, including the arm's-length principle.[305] If a tax treaty has been entered into between Denmark and the country in which the PE is located, the income will be determined in accordance with the provisions of the treaty.

The exemption provision for income attributable to a foreign PE does not apply if the right to tax the particular kind of income is conferred on Denmark under the terms of an applicable tax treaty.

Income derived from shipping and air transport, as defined in Article 8 of the OECD Model Convention, does not fall within the exemption provision. Further, income generated by a foreign PE of a Danish company that is classified as controlled finance corporation income (see 3.f., below) is to be included in the taxable income of the Danish company. If mobile oil rigs are part of the foreign PE, the Danish company may each year elect to include income from activities connected with the rigs in its taxable income. Tax losses from such activities may only be set off against future positive income from such activities.

Capital gains realized by a Danish company on the disposition of a PE or foreign real property are exempt from Danish corporate income taxation, unless one of the exceptions described above applies.

A Danish company may elect to defer the taxation of a capital gain on commercial real property located in Denmark[306] by reducing the acquisition price of new commercial real property acquired in the same year the property was sold or in the following income year by an amount corresponding to the capital gain realized on the sale of the commercial real property. The newly acquired property must be used in the taxpayer's business. The letting of real property is not considered a commercial activity for purposes of this provision. The property acquired subsequently must be located in Denmark or in an EU Member State or EEA country. A sale of the subsequently acquired property will trigger taxation of the gain so deferred.[307]

If a Danish company acquires depreciable assets from its foreign PE and the transfer does not trigger any Danish or foreign taxation, the assets are deemed to have been acquired at the same time and for the same price as they were acquired by the PE. The taxable basis is, however, always reduced by the amount of depreciation that could have been taken under Danish rules from the date of acquisition.[308] The transfer of assets by a Danish company to its foreign PE is deemed to be a sale of the assets concerned. The same rule applies if voluntary international joint taxation is terminated.

Income is generally deemed to be derived as and when it accrues. It does not have to be received in cash. With regard to

[300] Consolidated Act No. 1241 of September 3, 2022, the Corporate Tax Act (*Selskabsskatteloven* or CTA), as amended, Sec. 1.1.1.

[301] CTA, Sec. 1.6.

[302] CTA, Sec. 1.6.

[303] Consolidated Act No. 700 of April 20, 2021, the Act on Taxation of Foundations and Certain Associations (*Fondsbeskatningsloven*), as amended.

[304] CTA, Sec. 8.2.

[305] CTA, Sec. 8.6.

[306] TGRP, Secs. 6A and 6C.

[307] CTA, Sec. 8.2.

[308] CTA, Secs. 8.4 and 8B.3.

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interest and other intercompany expenses, corporate taxpayers are specifically taxed on an accrual basis.[309]

As noted in A., above, a foreign corporation will be deemed to be resident in Denmark and, therefore, subject to Danish taxation on its worldwide income if it is effectively managed in Denmark.

Relief for foreign tax on foreign earned income is available under either domestic legislation (see V.B.3.d., below) or the provisions of an applicable tax treaty (see XIII.A., below).

2. *Accounting*

a. *In General*

The general accounting principles are contained in the Act on Annual Accounts[310] (the "Accounts Act"), as subsequently amended. Under the Accounts Act, Danish companies may prepare their accounts in accordance with the International Financial Reporting Standards (IFRS). Detailed rules concerning the application of the IFRS rules are laid down in Regulation No. 958 of September 13, 2019.

Regulation No. 1296 of November 14, 2018, sets out the minimum requirements that annual accounts must meet for tax purposes. For tax purposes, the annual accounts may also be prepared in a foreign currency and the result converted into Danish kroner.[311]

Most entities conducting commercial activities are subject to the Accounts Act, except for entities subject to the supervision of the Financial Supervisory Authority, certain public entities and businesses subject to the Act on Commercial Business Entities. With respect to the latter, such businesses are not required to draw up annual accounts if two of the following requirements are met in two consecutive accounting years: the "net balance" of the business is not more than DKK 7 million; the net turnover is not more than DKK 14 million; and the average number of full-time employees during the accounting year is not more than 10.[312] The amount of DKK 7 million comprises the total of all assets or the total of capital assets and current assets determined in accordance with the Accounts Act. If an entity meets these requirements and does not wish to draw up annual accounts, it must file a special statement with the Danish Business Authority in accordance with Section 145 of the Accounts Act. Unlimited and limited partnerships may, if they are part of a group of companies for which consolidated accounts are filed, also avail themselves of the opportunity to file special statements instead of drawing up annual accounts.[313]

The Act uses the term "annual report." An annual report is a document comprising the annual accounts, including any consolidated accounts, the annual report from management, the auditor's certificate, reports from the board of directors and any other reports. The Act distinguishes between businesses that must and businesses that *may* prepare annual reports. Limited liability companies such as A/Ss and ApSs, and European Companies (*Societates Europaeae* or SEs), except for smaller companies within group B (see below), must prepare annual reports. This requirement also applies to partnerships one or more of whose members is a limited liability company. Foundations and other entities with limited liability are subject to the same requirement. Only sole proprietors and partnerships none of whose members have limited liability are exempt from the requirement to produce annual reports.

The Act further classifies businesses that may opt to prepare or are required to prepare a report into four groups: A, B, C and D, as follows:

(i) Group A: voluntary annual reports.

- All businesses with personal liability;
- Partnerships all of whose members are personally liable; and
- Very small businesses with limited liability established under the Act on Certain Commercial Businesses. A/Ss and ApSs can never fall within group A, as discussed below.

A business falls within Group A[314] if, in two consecutive accounting years, two of the following requirements are met: the balance sheet total does not exceed DKK 7 million; the net turnover is not more than DKK 14 million; and the entity has an average of no more than 10 employees.

(ii) Group B: mandatory reports for small businesses.

- Small A/Ss and ApSs. The shareholders may, however, elect not to have the annual accounts audited if in two consecutive accounting years two of the following thresholds are not exceeded: a balance sheet total of DKK 4 million; a net turnover of DKK 8 million; and 12 full-time employees.[315] This election may also be made at the time such companies are formed. The exception applies to a holding company and its subsidiaries if neither the holding company nor its subsidiaries in two consecutive accounting years exceed (in total) two of the following thresholds: a balance sheet total of DKK 44 million; a net turnover of DKK 89 million; and an average of 50 employees.
- Small limited partnerships.
- Small commercial foundations.
- Small businesses subject to the Act on Certain Commercial Businesses.

An enterprise falls within Group B if, in two consecutive accounting years, two of the following requirements are met: the balance sheet total does not exceed DKK 55 million; the net turnover is not more than DKK 111 million; and the entity does not have an average of more than 50 employees.

Special exemption provisions apply for microbusinesses within Group B. A company is considered a microbusiness

[309] Consolidated Act No. 1735 of August 17, 2021, Tax Assessment Act (*Ligningsloven* or TAA), as amended, Sec. 5.4 and 5.5.

[310] Consolidated Act No. 838 of August 8, 2019, on the Act on Annual Accounts (*Årsregnskabsloven* or AA), as amended.

[311] TCA, Sec. 28.

[312] AA, Sec. 4.

[313] AA, Secs. 4 and 5.

[314] AA, Sec. 7.

[315] AA, Sec. 135.

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if, in two consecutive years, two of the following thresholds are not exceeded: a balance sheet total of DKK 3.5 million; a net turnover of DKK 7 million; and an average of 10 employees.[316] The exemption provisions for microbusinesses allow companies not to provide the following information in the accounts:

- Information on the accounting principles applied;
- Information on debt due for payment five years or more after the balance date; and
- Certain extraordinary adjustments and reversals of write downs of capital assets.

(iii) Group C: mandatory reports for medium-sized businesses and additional reporting requirements for large businesses.

- The same kinds of business entities as are referred to above under Group B.

An enterprise falls within the definition of a medium-sized business if, in two consecutive accounting years, two of the following apply: the balance sheet total is no more than DKK 195 million; the net turnover is no more than DKK 391 million; and the entity has on an average basis no more than 250 employees. An enterprise is a large enterprise if two or more of these limits are exceeded in two consecutive accounting years.

If the limits set out immediately above for medium-sized businesses are exceeded, additional reporting requirements are triggered. These requirements include requirements to provide information about environmental issues and information about employees to the extent such information is necessary to understand the development of the business, its results and its financial position.

(iv) Group D: mandatory reports for listed companies and companies owned by the state.

The determination as to the group into which an enterprise falls is made at the end of the financial year. Different requirements as to the contents of the annual report apply to the various groups.

Under the Accounts Act, a general requirement is that the annual accounts must give a true and fair picture of a company's assets and liabilities, its financial position, and its profit or loss.[317] The Act also describes fundamental accounting concepts, such as historical cost and going concern.

The annual report consists of a balance sheet and an income statement (profit and loss (P&L) account), as well as notes to these statements.[318]

The annual report[319] must be prepared in accordance with the basic assumptions set out below:

(i) The annual report must be prepared in a clear and understandable manner (clarity).

(ii) The substance of transactions, rather than their form where the form has no real substance, must be accounted for (substance over form).

(iii) All relevant matters must be included in the annual report unless they are insignificant (materiality). However, where several insignificant matters are deemed to be significant when combined, they must be included.

(iv) The operation of an activity is based on a going concern assumption unless the activity is to be discontinued or it is assumed that it will not be possible for it to be continued. If an activity is discontinued, the classification and presentation of the accounts, as well as the recognition and measurement of assets and liabilities must be adjusted accordingly.

(v) Any change in value must be shown irrespective of its effect on equity and the income statement (neutrality).

(vi) Transactions, events and changes in value must be recognized when they occur, irrespective of the time of payment (accrual basis).

(vii) The basis of methods of recognition and measurement must be applied uniformly to matters within the same category (consistency).

(viii) Each transaction, event and change in value must be recognized and measured individually, and individual matters must not be offset against each other (gross presentation).

(ix) The opening balance sheet for the financial year must be equivalent to the closing balance sheet for the previous financial year (formal consistency).

(x) The financial year, presentation and classification, method of consolidation, method of recognition and measurement basis, as well as the monetary unit applied, must not be changed from period to period (actual consistency). However, a change may be made if this results in a more true and fair view being given, or if the change is necessary to comply with new rules in the case of a transition to a new reporting class, statutory amendments, new orders or regulations in pursuance of an act or in the case of new standards. Any such change must be disclosed in the notes together with an explanation of the reasons for the change.[320]

A parent company is, in addition, required to prepare consolidated financial statements that must include its own financial statements and those of its subsidiaries and other related entities.

The P&L account and the balance sheet must be drawn up in accordance with the presentation layouts set out in Exhibit 2 of the Accounts Act.

A subsidiary that has not carried on any activity during the financial year need not present an annual report for the year in question and instead may submit an exemption statement[321] if:

[316] AA, Sec. 22a.1.
[317] AA, Sec. 11.
[318] AA, Chapter 6, Secs. 23–32.
[319] AA, Sec. 13.
[320] AA, Sec. 51.
[321] AA, Sec. 78a.

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(i) The subsidiary's financial statements, either by way of full consolidation or by way of recognition and measurement under the equity method, form part of the consolidated financial statements presented by an immediate or higher-ranking parent;

(ii) The immediate or higher-ranking parent is governed by the legislation of a European Union (EU) Member State or a European Economic Area (EEA) country;

(iii) The consolidated financial statements have been prepared in accordance with the provisions of the Accounts Act or, if the parent in question is not Danish, in accordance with the provisions of Council Directive 2013/34/EU, as amended, and these statements have been audited and published in accordance with those provisions;

(iv) All of the subsidiary's owners have accepted the procedure for the financial year in question;

(v) The parent has declared that it guarantees the subsidiary's commitments until submission by the subsidiary of an annual report for a subsequent financial year and the receipt and publication of that annual report in accordance with the provisions of Chapters 19 and 20 of the Accounts Act; and

(vi) It is disclosed in the consolidated financial statements in question that the subsidiary has omitted to present an annual report.

An enterprise is deemed to be without any activity in a financial year if it does not carry on any commercial activities (whether directly or indirectly), does not hold any investments in another enterprise and has not undertaken any risks in that financial year.[322]

In the exemption statement, the management of the company must state that the exemption in question has been applied and must guarantee that the conditions for applying the exemption have been fulfilled.

b. Accounting Periods

When a corporation is formed, it must select a business year, which must be 12 months in duration.[323] The first business year, however, may be either longer or shorter than 12 months. There are, theoretically, no limitations as to the length of the first fiscal year if it is less than 12 months. If it is more than 12 months, it may not exceed 18 months.[324]

If a financial year is changed, the period of transition may not exceed 12 months. However, the period of transition may be up to 18 months if it is necessary to change the financial year to achieve the same financial year for a number of companies in the event of:

(i) The establishment of a consolidated group;

(ii) The establishment of participation in the joint management of another enterprise; or

(iii) A merger.

A parent company and its subsidiaries must have the same financial year, unless this is not possible due to circumstances beyond the control of the parent and the subsidiaries.[325]

Taxable income is computed based on the business year.

c. Accounting Methods

The methods of tax accounting differ substantially from the methods of ordinary business accounting; for tax purposes, it is necessary to convert the ordinary financial statement, as approved by the annual general meeting of the shareholders, into a financial statement prepared in accordance with the tax laws.

General costs and income are determined when legally incurred on an accrual basis.

Typical items requiring adjustment for tax purposes are depreciation of equipment and buildings, reserves for bad debts, and quality guarantees. Contracts under completion may be accounted for using either the state of completion method or the percentage of completion method. In addition, adjustments must be made for a number of expenses that are not allowed for tax purposes but are accepted in other respects.

d. Inventories

For accounting purposes, the purchase price or production cost of stocks of goods may be calculated based on weighted average prices using the "first in/first out" (FIFO) method, the "last in/first out" (LIFO) method or any similar method.[326]

3. Calculation of Gross Income

a. In General

Generally, all income of Danish registered companies, including taxable capital gains, is taxed as ordinary business income.[327] Gross income is worldwide income except for income from a foreign PE and foreign real property (see 1., above) and the basis of assessment is the company's taxable profit as stated in its annual accounts.

b. Capital Gains

Capital gains and losses on the sale of machinery and equipment, ships and certain intangibles are subject to capital gains taxation under the Act on Tax Depreciation. Capital gains on shares and real property are subject to taxation under the Act on Taxation of Gains and Losses on Shares and the Act on Taxation of Gains on Real Property, respectively, and gains and losses on bonds and other securities are subject to taxation under the Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments.

In the case of a company, taxable gains are included in ordinary taxable income. By contrast, an individual is taxed on capital gains at various rates depending on the kind of gain and the individual's total taxable income. Gains on assets that are subject to capital gains taxation are discussed below.

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322 AA, Sec. 6.2.
323 AA, Sec. 15.
324 AA, Sec. 15.2.
325 AA, Sec. 15.5.
326 AA, Sec. 45.
327 CTA, Sec. 8.

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(1) Shares

The taxation of gains arising on the sale of shares by a company depends on the classification of the shares in question. Under the Act on Taxation of Gains and Losses on Shares, shares are classified into the following categories: shares in a subsidiary;[328] shares in a group company;[329] treasury stock;[330] shares acquired as a trader;[331] and portfolio shares.[332]

Shares in a subsidiary are defined as shares in a company whose corporate shareholder owns at least 10% of the share capital. The subsidiary must be a company within the meaning of the Corporate Tax Act. In the case of a foreign subsidiary, the subsidiary must be resident and subject to corporate income tax without exemption in a jurisdiction that has committed to exchange information with Denmark under a tax treaty, multilateral convention or bilateral agreement.[333]

The shares in the subsidiary are deemed to be directly owned by those direct or indirect shareholders in the parent company ("the intermediate parent company") that: (i) are subject to taxation under the Corporate Tax Act, the rules on international joint taxation or the controlled finance corporation (CFC) rules; and (ii) at each level between the shareholder and the intermediate parent company, own at least 10% of the share capital in the underlying company. This rule, however, only applies if:[334]

(i) The primary object of the intermediate parent company is to hold shares in subsidiaries or in group companies;

(ii) The intermediate parent company does not carry on an actual economic activity in relation to its holdings of the shares in question;

(iii) The intermediate parent company does not own the entire share capital in the subsidiary or the intermediate parent company owns the entire share capital in a subsidiary that is not taxable in Denmark or a jurisdiction that has committed to exchange information with Denmark under a tax treaty, multilateral convention or bilateral agreement;

(iv) The shares in the intermediate parent company are not listed on a regulated market or a multilateral trading facility; and

(v) More than 50% of the share capital in the intermediate parent is owned, directly or indirectly, by Danish companies or Danish PEs that could not have received dividends tax-free had the shares in the particular subsidiary been held directly.

These provisions eliminate the possibility of setting up intermediate holding companies to circumvent the 10% holding requirement.

If, as a result of the rules described above, the shares are owned by a number of intermediate parent companies, then the shares are considered directly owned by the ultimate parent company.[335]

If the shares referred to above under (v) enjoy preferential rights with regard to dividend distributions, the following holdings in the intermediate parent are to be taken into consideration in determining whether the thresholds referred to in (v) are met:

(i) Shares owned by individuals having a determining influence, as defined by Section 16H of the Tax Assessment Act;

(ii) Shares owned by closely related individuals, as defined in Section 16H of the Tax Assessment Act;

(iii) Portfolio shares controlled by individuals referred to above in (i) and (ii); and

(iv) Portfolio shares owned by foundations, etc., founded by the individuals mentioned in i to ii, above.[336]

Under Section 16 H of the Tax Assessment Act, subsection 6, ownership of more than 50% will constitute a determining influence. Closely related individuals are the spouse, parents and grandparents, descendants and their spouses.

The term "shares in a subsidiary" does not encompass convertible bonds and subscription rights to convertible bonds.

Example (1): An intermediate holding company (IH) owns 40% of the shares in a company (D) engaged in ordinary trade and business. The shares in IH are owned by companies A (60%) and B and C (20% each). A would have owned 24% of the shares in IH if it owned those shares directly and B and C would each own 8%. The 50% threshold set forth above in (v) is not met and IH's holding of shares is not disregarded.

Example (2): An intermediate holding company (IH1) owns 40% of the shares in a company (D). The shares in IH1 are held by IH2 (60%) and S (40%). The shares in IH2 are owned by F1–F4 (25% each). If they owned the shares directly, F1–F4 would each have owned 6% of the shares in D. If it owned the shares directly, S would own 16% of the shares in D. F1–F4 and S are deemed to own the shares in D directly. The shares held by S exceed the 10% threshold and are thus still treated as shares in a subsidiary. If IH1 were to acquire the remaining shares in D, the anti-avoidance provision would not apply, as the indirect ownership of F1–F4 would be 15% each. However, the change in the status of their shareholdings would trigger capital gains taxation of F1–F4[337] (see further, below).

Shares in a group company are defined as shares where the shareholder and the company in which the shares are held are jointly taxed or may be jointly taxed under the rules concerning domestic or international joint taxation.[338] Shares held by a foundation or a trust controlling more than 50% of the votes

[328] TGLS, Sec. 4A.
[329] TGLS, Sec. 4B.
[330] TGLS, Sec. 10.
[331] TGLS, Sec. 17.
[332] TGLS, Sec. 4C.
[333] TGLS, Sec. 4A.2.
[334] TGLS, Sec. 4A.3.
[335] TGLS, Sec. 4A.4.
[336] TGLS, Sec. 4A.5.
[337] TGLS, Sec. 33A.
[338] TGLS, Sec. 4B.

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of the company in which the shares are held[339] are also considered shares in a group company. Shares in a group company are deemed to be held by the shareholders of the parent company if the conditions in Section 4A.3 (I)–(IV) of the Act on Taxation of Gains and Losses on Shares discussed above are fulfilled. Convertible bonds and subscription rights to convertible bonds that may be converted into shares in a group company do not fall within the definition of shares in a group company.

Shares that do not fall within the definition of shares in a subsidiary, a group company, treasury stock or shares acquired by a share trader are treated as portfolio shares.

Capital gains and losses realized by a corporate taxpayer on shares in subsidiaries and group companies do not form part of the corporate taxpayer's taxable income, irrespective of the length of time for which the shares are owned.[340]

Although, as stated above, a deduction for losses realized on subsidiary shares is generally not available, corporate taxpayers may — subject to certain requirements — deduct final losses that are realized by a foreign subsidiary or PE, or in connection with real property assets located in an EU or European Economic Area (EEA) Member State, the Faroe Islands or Greenland.[341]

Detailed rules apply as to what is considered a "final loss." Whether a loss can considered to be final is based on local rules in the jurisdiction where the subsidiary, PE or real property asset are incorporated or located.[342] A deduction for a final loss will only be allowed if the Danish corporate taxpayer can demonstrate that it will not be possible to utilize such a loss in any previous, current or future income years according to the local rules where the subsidiary is incorporated or the PE or real property asset are located. Further, a loss will not be considered final if the loss has been or can be utilized in another jurisdiction different from where the subsidiary is incorporated or the PE or real property asset are located.[343] Finally, a loss will also not be considered final, if the loss could have been utilized in the jurisdiction where the subsidiary are incorporated or the PE or real property asset are located had the rules in that jurisdiction been similar to the Danish rules that would apply for the utilization of such losses. The deduction of such final losses is allowed only as of income year 2019.

Capital gains on portfolio shares that are not listed on a regulated market or a multilateral trading facility are exempt from capital gain taxation if they are owned by a company and the portfolio company is subject to Danish corporate income taxation or is a foreign company subject to similar taxation.[344] Furthermore, the value of listed shares in which the portfolio company may have invested may not exceed 85% of the equity of the portfolio company.[345]

Capital gains on portfolio shares are otherwise taxable.[346] Losses on such shares are deductible if the taxpayer calculates its taxable income on an inventory basis, meaning that the taxable gains and losses are calculated on an annual basis even though not realized.[347] If the taxable income is computed on a realization basis, losses may only be deducted from gains on shares realized in the same income year that are taxed on the same basis.[348] Excess losses may be carried forward but not set off against other kinds of income. If a taxpayer subsequently elects to be taxed on an inventory basis, losses on shares previously taxed on a realization basis may be set off against gains taxable on the inventory basis.[349] A loss on convertible bonds that may be converted into shares in a subsidiary or a group company is not deductible.[350]

Gains and losses on treasury stocks do not form part of taxable income.[351]

In the case of a taxpayer that is considered to be trading in shares for tax purposes, for example, a bank, a mortgage institution or any other professional investor, gains and losses realized as a trader form part of the taxpayer's taxable income.[352] A trader is required to use the inventory basis to calculate its taxable income.[353] A trader may also hold shares that do not form part of its trading assets, such as shares in a subsidiary or in another group company. Gains and losses on such shares are not taxed as trading income.

Losses sustained by a trader on shares held as trading assets may be deducted.[354]

Losses incurred on convertible bonds and subscription rights related to convertible bonds issued by group companies may not be deducted. Group companies are defined in accordance with Section 31C of the Corporate Tax Act.[355]

A corporate taxpayer is taxable on gains and losses on shares in Undertakings for Collective Investment in Transferable Securities (UCITS) and investment companies.[356] An investment company is defined as follows:

(i) A company covered by Directive 2009/65/EC of the European Parliament and of the Council of July 13, 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

(ii) A company investing in securities where, on demand from the bearer, shares are redeemed by funds of the company at a rate representing a value that is not significantly lower than the intrinsic value of the company. A purchase of shares of a company by a third party that has undertaken with respect to the company an obligation to purchase shares at a rate representing a value that is not significantly less than the intrinsic value of the company is considered a redemption by the company. The requirement concerning

[339] CTA, Sec. 31C.
[340] TGLS, Sec. 8.
[341] CTA, Sec. 31E, introduced by Act No. 1835 of December 8, 2020.
[342] CTA, Sec. 31E.3.
[343] CTA, Sec. 31E.3.
[344] TGLS, Sec. 4C.3.
[345] TGLS, Sec. 4C.4.
[346] TGLS, Sec. 9.1. Portfolio shares held by life insurance companies are always taxable under TGLS, Sec. 4C.2.
[347] TGLS, Sec. 9.2.
[348] TGLS, Sec. 9.3.
[349] TGLS, Sec. 9.4.
[350] TGLS, Sec. 9.5.
[351] TGLS, Sec. 10.
[352] TGLS, Sec. 17.1.
[353] TGLS, Sec. 23.5.
[354] TGLS, Sec. 17.1.
[355] TGLS, Sec. 17.2. See V.B.7, below.
[356] TGLS, Sec. 19.

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redemption on demand will be deemed to have been met even if the demand is met over a certain time limit.

(iii) A company engaged in the business of collective investments, even in the absence of an obligation to redeem outstanding shares. Collective investments are deemed to be made if the company has at least eight members.

A company is not, however, deemed to be an investment company in the following circumstances:[357]

- A company is not deemed to be an investment company if the assets of the company held predominantly through subsidiaries are investments in assets other than securities. A subsidiary is defined as a company in which the parent during the year, directly or indirectly, controls more than 50% of the shares or the votes. A holding company is, thus, not considered an investment company for purposes of Section 19 of the Act on Taxation of Gains and Losses on Shares and, thus, it is not possible to establish a nontaxable holding company even if the holding company is required to redeem its shares on demand.

- A company is not deemed to be an investment company even if its business is collective investments and the company is under an obligation to redeem its shareholdings if more than 15% of its assets during the accounting year on average is invested in assets other than securities. The term "security" does not encompass shares in a company at least 10% of whose share capital is held by the company making the investments unless the former is classified as an investment company.

- The term investment company does not encompass qualifying investment funds comprised under Section 16C of the Tax Assessment Act or investment funds subject to taxation under the Act on the Taxation of Members in Account Keeping Investment Associations.[358]

(iv) A company referred to above at (iii) is not an investment company if the company exclusively owns shares and options in another company and if all the shareholders in the first company at the time the shares were acquired were employed by the other company or other companies that are members of the same group as the other company.[359]

Gains and losses on shares in investment companies covered by Section 19 of the Act on Taxation of Gains and Losses on Shares are taxed as inventory.[360]

Taxable gains and losses on negotiable shares in accumulating investment funds are calculated on an inventory basis.[361] The rule applies to Danish as well as foreign investment funds.

Gains and losses on negotiable shares in qualifying investment funds comprised in Section 16C of the Tax Assessment Act must be included in taxable income.[362] The gains and losses are calculated based on inventory.[363] The gain or loss on such shares is included in the ordinary corporate income of a corporate taxpayer.

A change in the status of shares for tax purposes[364] is considered a disposal and acquisition of new shares for capital gains tax purposes. The old shares are deemed to have been disposed of at their market value at the time the status is changed and the new shares to have been acquired at the same value. There is a change in status if, for example, shares in a subsidiary or a group company become portfolio shares, shares in an investment company, shares in an accumulating investment association or shares in a distributing investment association. Furthermore, the change of portfolio shares, shares of a share trader, shares in an investment company, shares in an accumulating investment association or shares in a distributing investment association into shares in a subsidiary or shares in a group company also constitutes a change of status. Taxation is triggered even though the change of status results from an otherwise tax-free reorganization carried out with or without permission from the Danish Tax Agency (*Skattestyrelsen* — DTA).[365]

For the taxation of capital gains and losses in the hands of individual taxpayers, see X.C., below.

(2) *Real Property*

Capital gains arising from the sale of real property are subject to ordinary corporate taxation at the rate of 22%.[366] For purposes of calculating the gain or loss, the sale price must be calculated on a cash basis. The difference between the original acquisition price and the sale price constitutes the taxable gain.

The acquisition price must also be calculated on a cash basis. The original acquisition price is increased by an annual allowance of DKK 10,000. The allowance is granted until and including the income year in which the property is sold unless it is sold in the same year as that in which it is acquired. The acquisition price is further increased by maintenance expenses exceeding DKK 10,000 annually to the extent such expenses have not been deducted for income tax purposes.[367]

Expenses incurred in connection with the rebuilding or refurbishment of depreciable property that have been deducted for tax purposes cannot be added to the acquisition price. Expenses incurred in connection with the artistic decoration of the property that can be depreciated under the Act on Tax Depreciation cannot be added to the acquisition price for purposes of calculating the taxable gain.[368]

If the property is used for agricultural purposes or is a forestry property,[369] the taxpayer may elect to have the acqui-

[357] TGLS, Sec. 19.2.

[358] TGLS, Sec. 19.3, and Consolidated Act No. 1837 of September 21, 2021 (*Investeringsforeningsbeskatningsloven*).

[359] TGLS, Sec. 19.4.

[360] TGLS, Sec. 23.7.

[361] TGLS, Secs. 20 and 23.5.

[362] TGLS, Sec. 20A.

[363] TGLS, Sec. 23.5.

[364] TGLS, Sec. 33A.

[365] TGLS, Sec. 33A.2.

[366] Such gains are taxed as "capital income" in the hands of individuals. See X.C.3. However, under TGRP, Sec. 8, gains realized by an individual on his or her primary residence or summer house are exempt from taxation, irrespective of the period of ownership provided the land on which the property is erected is no more than 1,400 square meters, or, if it is larger, cannot be divided into two or more lots under public zoning regulations.

[367] TGRP, Sec. 5.2.

[368] TGRP, Sec. 4.10.

[369] TGRP, Sec. 5A.

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sition price indexed as stipulated in Section 5A of the Act on Taxation of Gains on Real Property. The acquisition price is reduced by depreciation deductions that, under the Act on Tax Depreciation, are not recaptured in connection with the disposal of the real property. The acquisition price is also reduced by depreciation on demolished buildings and losses previously deducted for income tax purposes.

If a milk quota under EU farming provisions is sold in connection with the sale of a farm, the original acquisition price for the farm is reduced by the consideration paid for the milk quota.[370]

A ring fence principle applies with regard to the deduction of losses incurred on the disposition of real property. Losses may only be set off against profits on the sale of other real property.[371] Losses that exceed taxable gains may be carried forward indefinitely.

A rollover relief that allows the taxable gain realized on one property to be rolled over against the acquisition price of another property is available to individuals and corporations[372] if the following conditions are fulfilled:

(i) The taxpayer either purchases real property (“the new property”) in the same tax year as that in which it realizes a gain on real property (“the old property”), or acquires the new property either at the latest in the tax year following the year in which the old property was sold or in the year prior to the year in which the old property is sold;

(ii) The acquisition price of the new property is reduced by the entire gain on the old property, without any of the reductions described above; and

(iii) The taxpayer notifies the DTA, at the latest at the time when the relevant tax return has to be filed, that it claims the relief.

The rollover relief only applies to the share of the gain that is equal to the share of the real property used by the taxpayer for its business.

The rollover relief may not be claimed if the property is leased to a third party, although relief may be claimed if the property is leased to a company that is controlled by the property owner. Control is defined as ownership of more than 50% of the share capital or control over more than 50% of the votes. The property must be used for commercial purposes.[373]

The rollover relief is not available with respect to property located in a foreign country, including Greenland and the Faroe Islands, unless the taxpayer is taxable on his or her worldwide income in Denmark at the time the rollover relief is claimed. A taxpayer taxable in Denmark may claim the relief if the property is located in an EU Member State or an EEA country, Greenland or the Faroe Islands, or if the foreign country in which the property is located exchanges information with Denmark under a double taxation agreement or an agreement on mutual assistance in tax matters.

Any recovery, in connection with the sale of real property, of depreciation allowance previously taken is subject to capital gains taxation. As previously stated, capital gains are included in the ordinary income of a corporate taxpayer.

If the taxpayer trades in real property, gains and losses are taken into consideration for tax purposes without any limitations.[374]

The sale or relinquishment of a contract concerning the construction of real property is deemed to be a sale of real property. Gains and losses are computed as the difference between the sale price and the purchase price for the contract.[375]

Certain transitional rules apply in the case of commercial real property acquired before May 19, 1993. For purposes of calculating the capital gain on such property, a taxpayer may elect that the acquisition price be either: (i) the value fixed by the public appraisal on January 1, 1993, increased by 10% or increased by 10% and half of the difference between this figure and the public appraisal on January 1, 1996; (ii) the actual value of the real property on May 19, 1993, based on an appraisal of the value under the applicable provisions of the Act on Appraisal of Real Property in effect at that time;[376] or (iii) the actual acquisition price adjusted in accordance with Section 4A of the Act on Taxation of Gains on Real Property and increased by maintenance and improvement expenses incurred prior to 1993, if the latter value is higher.

The adjustment under Section 4A of the Act on Taxation of Gains on Real Property is calculated as follows:

370 TGRP, Sec. 5.3.
371 TGRP, Sec. 6.3.
372 TGRP, Sec. 6A.
373 TGRP, Sec. 6A.5.
374 TGRP, Sec. 1.2.
375 TGRP, Sec. 1A.
376 TGRP, Sec. 4.3.

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Year	Adjustment Percentage
1975 or earlier	182.4
1976	158.6
1977	140.0
1978	120.2
1979	108.0
1980	93.5
1981	79.9
1982	62.6
1983	49.3
1984	40.2
1985	32.5
1986	27.7
1987	23.6
1988	18.1
1989	12.5
1990	7.7
1991	5.6
1992	3.5
1993	0

With regard to property located in a foreign country, the acquisition price is the market value on May 19, 1993, unless the original purchase price was higher, in which case it is the original purchase price.[377]

(3) Receivables and Debts

Capital gains and losses arising from the sale or repayment of receivables and debts, such as bonds, debentures and other debt instruments, from the relinquishment of debt and from the sale of financial contracts including call and put options without any regard to the tax treatment of the underlying assets are, in the case of a company, generally subject to ordinary taxation.[378] Capital gains and losses on convertible bonds are taxed under the Act on Taxation of Gains and Losses on Shares.[379]

The Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments contains a limitation provision under which losses on intercompany claims and loans are nondeductible.[380] This provision applies irrespective of whether the companies in question are domestic or foreign, and of whether they are jointly taxed or could have been jointly taxed. As a consequence of this provision, the relinquishment of debt is not taxable in the hands of the debtor if the creditor cannot deduct the loss and the parties are members of the same group of companies.[381] The relinquishment is taxable, however, if the debt is reduced to an amount lower than the value of the debt at the time of relinquishment, unless the debtor can receive contributions tax-free.[382] If the parent company of a Danish subsidiary is a foreign company, the relinquishment of debt owed by the subsidiary to the parent is not taxable if the parent company can demonstrate that the loss is not deductible under its domestic legislation. In that case, the loss carried forward will not be reduced.

Companies are considered to be members of the same group if the same shareholders, at the time the loan or the debt is established or at any subsequent time, directly or indirectly own more than 50% of the shares or the votes in each of the companies concerned. This provision also applies to companies owned by a foundation.[383] If company A controls 50% of the votes in companies C and D and company B also controls 50% of the votes in companies C and D, then C and D are group companies within the meaning of the Act.

The object of the provision is twofold. In the absence of the provision, a loss could be claimed on investments in capital assets by a subsidiary that was financed by a loan from its parent. Generally, a loss on capital assets is not deductible for corporate income tax purposes, but the loss on the loan could, in the absence of the limitation provision, be deducted by the parent company. If, on the other hand, the investments prove to be successful, the parent could realize a tax-free capital gain on the shares in the subsidiary. If the parent and the subsidiary were jointly taxed, a double dip would be possible: if the subsidiary used the proceeds of the loan for a deductible expenditure, the jointly-taxed companies could deduct such expenditure and a subsequent loss on the loan could be deducted by the parent company.

If a loan is made in a foreign currency, the nondeductible amount is calculated based on the exchange rate on the date of the loan, irrespective of any fluctuations in exchange rate.[384]

The application of these provisions may be illustrated by the following example:

> *Example:* A parent company lends US$100,000 to its subsidiary. At the time the loan is paid back, the parent relinquishes US$50,000. The exchange rate at the time the loan was granted was DKK 7 to US $1 and at the time of repayment DKK 6.50. The parent company suffers a loss of DKK 375,000 (DKK 700,000 – DKK 325,000). The nondeductible loss is DKK 350,000 (DKK 700,000 – DKK 350,000); the remaining DKK 25,000 may be deducted as a currency loss.

As noted above, a loan is deemed to be an intercompany loan if it is made between companies, where the same group of shareholders at the time the loan is entered into or at any subsequent time, directly or indirectly: (i) owns more than 50% of the share capital of each of the companies concerned; or (ii) controls more than 50% of the votes in each of the companies.

[377] TGRP, Sec. 4.3.
[378] Under TGLC.
[379] TGLC, Sec. 1.3.
[380] TGLC, Sec. 4.1.
[381] TGLC, Sec. 8.
[382] CTA, Sec. 31D.1 and 2.
[383] TGLC, Sec. 4.2.
[384] TGLC, Sec. 4.1.

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The same test applies if the companies are owned by a foundation.[385]

The loss limitation provision does not apply if the debt relinquished represents consideration for the taxable supply of goods and services, provided the creditor is not jointly taxed with the debtor or the debt is acquired after termination of joint taxation.[386] Furthermore, the debtor must be taxable on the gain realized on the relinquishment or the gain must be set off against tax losses. The loss limitation provision does not apply with regard to losses on bonds and other debentures listed on a stock exchange.[387] It also does not apply with regard to interest on intercompany loans if the interest has been included in the taxable income of the creditor and the creditor is not jointly taxed with the debtor or the debt is acquired after joint taxation has been terminated.[388] Finally, the limitation provision does not apply to taxable entities that are regarded as traders with regard to the purchase and sale of debts or that otherwise conduct financial business, provided the intercompany relationship only exists in connection with the creditor's temporary running of the debtor's business with a view to restructuring the loan or the business in question.[389]

If interest or gains on a debt are exempt under the terms of a double taxation agreement, losses on the debt cannot be deducted.[390]

Gains on an intercompany loan are not taxable to the extent the creditor cannot deduct the loss on the loan. This is not the case, however, if the actual debt is reduced to an amount below the value of the debt at the time of relinquishment, unless the debtor can receive contributions tax-free. Gains on intercompany loans from foreign companies are not taxable if the creditor would not have been able to deduct the loss had the creditor been subject to Danish taxation and the creditor demonstrates that the loss is not deductible under foreign law.[391]

A contribution made by a group company as defined in Section 31C of the Corporate Tax Act (see 7.a., below) may be tax-free under Section 31D of that Act. This will be the case if the contribution is made by the parent company of the debtor, or a sister company if the contributing company and the receiving company are directly or indirectly controlled by the same parent. A contribution between two sister companies may only be made tax-free if the joint parent can receive tax-free dividend distributions from the sister company making the contribution. If the joint parent owns the contributing company only indirectly, the condition concerning the receipt of tax-free contributions must be fulfilled by all companies in the chain of ownership. An intermediate company that is a foreign company must fall within the definition of a company provided for purposes of the EU Parent-Subsidiary Directive[392] or meet the requirements for exemption or reduction of withholding tax on dividends under the relevant tax treaty.

The company making the contribution cannot deduct the amount transferred for tax purposes.

If a foreign parent company can deduct the contribution under the relevant foreign law, the contribution will be taxable in the hands of the Danish company receiving the contribution.

Outside the context of intercompany loans, the provisions described above regarding the gains resulting from a relinquishment of debt not being taxable in the hands of the debtor to the extent the debt is not reduced to a lower amount than the value of the debt at the time of relinquishment apply only if the reduction of debt can be regarded as a general composition (*Samlet ordning*).[393] If the debt reduction is regarded as a general composition between the debtor and its creditors, the losses carried forward by the Danish debtor company will generally be reduced by an amount equivalent to the amount relinquished, i.e., the amount by which the debt is reduced. The losses are, however, not reduced if:

(i) The amount relinquished is taxable in the hands of the taxpayer;

(ii) The amount relinquished is a tax-free distribution (for example, certain dividends) or contribution (for example, a tax-free group contribution); or

(iii) The creditor company is a group company that cannot deduct the loss on the amount relinquished.

A loss reduction may also apply in the case of the conversion of debt or convertible bonds into shares, as such a conversion is generally equated to a relinquishment of debt. In such cases, the losses carried forward are generally reduced by the amount by which the nominal value of the claim converted exceeds the market value of the claim at the time of conversions, if any.

Chapter 6 of the Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments contains provisions concerning the tax treatment of financial instruments. Under the Act, forward contracts and put-and-call options are treated as financial instruments. The term "forward contracts" under the Act does not encompass spot contracts, where delivery takes place after completion of the contract, provided delivery takes place within the customary period for the type of contract in question. If the contract is adjusted in accordance with developments in the pricing of securities, goods or other assets, the contract is deemed to be a financial instrument. This is not the case, however, if the adjustment is made in accordance with fluctuations in currencies, the Danish or EU consumer indices, or the net price index.[394]

The provisions concerning the taxation of financial instruments introduce the concept of taxation in accordance with the "separation principle," i.e., the tax treatment of the gain or loss on an instrument is determined independently of the tax treatment of the underlying assets. Gains and losses are calculated as the difference between the value of the contract at the end of the income year and its value at the beginning of the income year. If the contract is acquired during the income year, gains and losses are calculated as the difference between the value of the contract at the end of the income year and its acquisition

[385] TGLC, Sec. 4.2.
[386] TGLC, Sec. 4.3.
[387] TGLC, Sec. 4.3.
[388] TGLC, Sec. 4.4.
[389] TGLC, Sec. 4.5.
[390] TGLC, Sec. 5.
[391] TGLC, Sec. 8.
[392] Council Directive 2011/96/EU of November 30, 2011, on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

[393] TGLC, Sec. 24.
[394] TGLC, Sec. 29.

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price. Gains and losses realized on contracts acquired and disposed of during the same income year are calculated as the difference between the selling price and the acquisition price.[395] In the case of contracts held at the beginning of an income year and disposed of during the income year, the gain or loss is the difference between the opening value and the selling price. The provisions[396] concerning financial instruments do not apply with regard to the following:

(i) Agreements concerning real property to the extent the relevant agreement concerns a period of less than 12 months;

(ii) Share subscription rights that are subject to taxation under the Act on Taxation of Gains and Losses on Shares;

(iii) Certain agreements concerning loans issued by mortgage associations;

(iv) Conversion rights related to bonds, mortgages and debt instruments;

(v) Agreements for the sale and purchase of shares;

(vi) Currency contracts in connection with the purchase and sale of financial instruments if the term of the currency contracts is usual for the delivery of the instruments to which they apply;

(vii) Normal contracts concerning the supply of goods and services; or

(viii) Agreements concerning the sale of the whole or a part of a business or shares in a business.

Corporate taxpayers are subject to certain loss limitation provisions with regards to a contract conferring a right or introducing an obligation to sell shares. Losses on such a contract can only be deducted to the extent they do not exceed gains realized, provided they were not realized earlier than in the income year 2002 on the same contract, less losses from other contracts that have been deducted.[397]

Excess losses can be deducted indefinitely against net gains from all contracts that confer a right or carry an obligation to sell or acquire shares.

(4) Machinery, Equipment, and Ships

Gains arising from the sale of machinery, equipment, and ships used for business purposes are subject to capital gains taxation under the Act on Tax Depreciation and the gains included in ordinary corporate income.

The tax is levied on the difference between the sale price and the written-down value for tax purposes. For details concerning the taxation of an ongoing business, see V.B.4.a.(5), below.

(5) Intangibles

Gains arising from the disposition of intangible rights that have a limited duration (for example, patent rights, copyright and trademarks) are subject to income taxation.[398] Gains arising from the sale of rights under a profit-sharing agreement or a lease, and compensation paid for the termination of an agency agreement or the acceptance of a noncompetition clause are also subject to income taxation if the compensation is paid in a lump sum.

Gains arising from the disposition of goodwill are subject to tax. Taxpayers may apply for deferral of the payment of tax on capital gains realized on goodwill and other intellectual property (IP) rights if the consideration is in the form of “earn outs.” Earn outs are defined under Section 12B of the Tax Assessment Act as payments that are to be paid for an indefinite period of time or payments the total amount of which is uncertain. In addition, the payments must be payable for at least the year in which the agreement is completed and the following year.

The transfer of intangible rights for use in a permanent establishment or head office in a foreign country, as a result of which the rights fall outside the sphere of Danish taxation, is deemed to constitute a sale of those rights at fair market value.

c. Dividend Income

Dividends received by a Danish company are generally to be included in the taxable income of the dividend-receiving company and taxed at the standard rate of 22%. In the case of dividends distributed by unlisted portfolio companies, only 70% of the dividend is included in the taxable income of the recipient company, resulting in an effective tax rate of 15.4% (70% × 22%).[399] A tax exemption applies to dividends received from certain group companies and subsidiaries (see further below).

Under Section 16A of the Tax Assessment Act, the following distributions made by a company are considered to constitute dividend distributions:

(i) Any kind of distribution made by a company to its shareholders;

(ii) A distribution of proceeds made by a company in liquidation if the distribution is made in the year in which the company is finally dissolved;

(iii) Any part of the minimum distribution that is not distributed by an investment fund required to make minimum distributions under Section 16C of the Tax Assessment Act;

(iv) The repayment by a foreign country of tax withheld on a dividend distribution;

(v) The difference between the sales price per share and the new purchase price if a company sells portfolio shares and, within six months after the sale, acquires tax-free portfolio shares in the same company. This provision only applies if the sale price is higher than the acquisition price and a distribution of dividends was made during the period between the sale and the purchase; and

(vi) The value of a gift by partial of fully free transfer of shares in a company when the shares are transferred in the shareholders interest.

[395] TGLC, Sec. 33.
[396] TGLC, Sec. 30.
[397] TGLC, Sec. 31.

[398] Consolidated Act No. 242 of February 18, 2021, Tax Depreciation Act (*Afskrivningsloven* or TDA), as amended, Secs. 40.6 and 41.2.
[399] CTA, Sec. 13.2.

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A distribution of liquidation proceeds in the years prior to the year of final dissolution is considered a sale of shares provided one of the following conditions is fulfilled:[400]

(i) The dividend-receiving company owns at least 10% of the company being liquidated and the distribution is a dividend distribution within the meaning of Section 2 of the Corporate Tax Act.

(ii) The receiving company owns less than 10% of the share capital, is taxable on the distribution and can exercise control over the dividend-paying company. This provision does not apply if the receiving company is a resident of an EU Member State and taxation should have been waived under Directive 2011/96/EU or a double taxation agreement.

(iii) The receiving company owns tax-free portfolio shares (under Section 4C of the Corporate Tax Act) in the company being liquidated and at least 50% of the assets of the company being liquidated are directly or indirectly owned shares in subsidiaries or group companies, or, within the last three years prior to the liquidation, such shares have been transferred directly or indirectly to the shareholders of the company or a group company.

Dividends received from Danish jointly-taxed subsidiaries and from foreign companies that may be jointly taxed are exempt.[401] Dividends received from subsidiaries are also exempt. A subsidiary is defined as a company in which another company owns at least 10% of the share capital.[402] The subsidiary also must be a company within the meaning of the Corporate Tax Act. If the subsidiary is a foreign subsidiary, it must be resident and subject to corporate income tax without exemption in a jurisdiction that has committed to exchange information with Denmark under a tax treaty, multilateral convention or bilateral agreement.

The exemptions do not apply if the dividend-paying company can deduct the dividends for income tax purposes.[403] The same is true if a lower-tier subsidiary has deducted the distribution for tax purposes and the distribution does not form part of the taxable income of another subsidiary.[404] Nor do dividends paid by an investment company, as defined in Section 19 of the Act on Taxation of Gains and Losses on Shares, qualify for the exemptions.

Further, the exemptions do not apply to a distribution made by a Danish company if the amount distributed is a redistribution of dividends received from a subsidiary or a group company, as defined in Sections 4A and 4B of the Act on Taxation of Gains and Losses on Shares, provided however, that the distributing company is a foreign company and the Danish company is not the beneficial owner of the dividends received.[405]

A capital gain on shares may, in certain circumstances, be treated as a dividend distribution, as discussed below.[406]

[400] TAA, Sec. 16A.3.
[401] CTA, Sec. 13.1.2.
[402] TGLS, Sec. 4A.
[403] EEC 90/435.
[404] CTA, Sec. 13.1. No. 2.3.
[405] CTA, Sec. 2.1c.
[406] CTA, Sec. 2 D.

If a legal person transfers shares or other equity instruments (such as warrants and convertible bonds) in a group company to another group company and the consideration for the shares transferred is not wholly or partly shares in the acquiring company, the part of the consideration that is not shares in the acquiring company is treated as a dividend distribution. This rule does not apply if, had the consideration been a distribution of dividends from the company transferred immediately before the transfer, the transferring company could have received the distribution tax-free under applicable rules. Nor does the rule apply when there is a transfer of shares to a company that, before the transfer, was not in the same group of companies as the transferring company, but only becomes a group company because of the rules of common control after the transfer, provided the acquisition by the acquiring company is not financed by the transferring company or another company in the same group as the transferring company. Two companies are in the same group if one company owns more than 50% of the share capital or controls more than 50% of the votes of the other company.

A further limitation provision applies when there is a transfer of shares to a company that does not carry on any commercial activities. If a legal person transfers shares (including convertible bonds and options to subscribe to new shares in a company) that, at the time of transfer, did not conduct any commercial activity within the meaning of Section 33.a.3 of the Corporate Tax Act (i.e., the company did not assume any business risk by conducting a commercial activity), and part of the consideration for the shares transferred is not shares in the acquiring company or a company that is a member of the same group of companies, the part of the consideration that is not shares in the acquiring company or a company that is member of the same group is considered a dividend distribution. This rule also applies if no part of the consideration consists of shares in the acquiring company or in a group company, and the transferor owns shares in group companies.

If a merger or division is not subject to the Act on Tax-Free Mergers, consideration paid to a shareholder other than shares in the receiving company is treated as a dividend distribution if, after the merger or division, the shareholder owns shares in one of the transferring or receiving companies or a company that is a member of the same group.

If a transaction is reclassified as a dividend distribution, the distribution is generally subject to withholding tax at the rate of 22%, unless a tax exemption or reduction applies.

If dividends are received from a foreign company and are not exempt from Danish tax, the income tax imposed on the dividend-receiving company is reduced by an amount equivalent to the ratio between the total income tax and the tax on the dividends. The tax cannot be reduced by an amount exceeding the actual tax paid by the subsidiary. For the reduction to be available, the dividend, receiving company must own at least 10% of the shares in the dividend paying company at the time the distribution is made.[407]

If a Danish company receives dividends from an investment company that is or has been a foreign company for Danish tax purposes and the rule described in the preceding paragraph

[407] CTA, Sec. 17.2.

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does not apply, the Danish company may apply for relief from Danish taxes levied on the dividends received from the investment company.[408] However, the relief may not exceed the amount of taxes that the foreign investment company had to pay on the dividends declared to its Danish parent.

If none of the provisions described above apply, a Danish parent may claim relief for foreign taxes paid on the foreign dividends it receives, but the relief may not exceed that part of the Danish tax that can be allocated on a proportional basis to the dividend income from the foreign subsidiary.

It should be noted that the application of the tax exemptions may be restricted under the general anti-avoidance rule (GAAR). For further, see V.B.12., below.

d. Income from Foreign Sources

Ordinary income and capital gains of a Danish corporation from foreign sources are subject to Danish tax as earned income or capital gains.[409] However, income derived by a foreign branch (PE) or from real property is exempt from Danish corporate income taxation.

The tax exemption regarding foreign branches and real property does not apply if the taxpayer elects to be jointly taxed in accordance with the rules on international joint taxation. Also, if the income generated by a foreign branch would have been CFC income as defined in Section 32 of the Corporate Tax Act had the activities of the branch been conducted through a subsidiary, the income generated by the branch must be included in the annual income statement of the Danish corporation and accounted for in accordance with Danish tax law. Furthermore, the exemption does not apply if Denmark has the right to tax the particular kind of income under an applicable double taxation agreement.[410]

Foreign income earned by a subsidiary is generally not subject to Danish income tax. Danish income tax is only imposed when and to the extent the income is repatriated through the payment of dividends, royalties, management service fees, etc. Income from foreign subsidiaries will be subject to Danish taxes if the parent corporation and its wholly-owned subsidiaries are taxed jointly (see V.B.7., below) or are subject to Danish CFC taxation (see V.B.3.f., below).

Income in the form of interest or royalties from foreign sources is subject to Danish taxes. The relevant tax period is the period in which the amount in question falls due for payment, but a corporation may choose to use the accrual method for all interest income and expenses. In either case, relief for foreign withholding tax is available either under the terms of an applicable tax treaty or in accordance with domestic credit provisions. The relief is calculated on a net basis.

e. Employee Stock Options

In general, a company granting shares, warrants or stock options may generally deduct the discount value related to such grants for corporate income tax purposes. However, the company granting the shares, warrants or options may not take such a deduction if a Section 7P election is made. Section 7P is described in more detail at X.C.7., below.

Under Section 16 of the Tax Assessment Act, an employee is deemed to have received consideration if the employee pays less than the market value of the share, option or warrant at the time he or she acquires an unconditional right to the instrument. Under Section 28 of the Tax Assessment Act, the taxation of a qualifying option or warrant is, however, deferred until the time the option or warrant is exercised or disposed of. Subject to certain requirements, instead of taxation under Sections 16 or 28, the employer and employee may elect for taxation under Section 7P. Under Section 7P, an employee is not taxed on the value of shares, options or warrants at the time they are received, nor at the time of exercise, but only on any gains subsequently realized when the shares are sold. See further at X.C.7., below.

f. Controlled Finance Corporations

(1) In General

The detailed and complex provisions concerning controlled finance corporations (CFCs) are to be found in the Corporate Tax Act.[411] The rules apply to holdings in Danish, as well as foreign, subsidiaries.

The CFC tax regime was significantly amended by Act No. 1180 of June 8, 2021, with the aim of aligning the regime with the rules on CFC taxation set out in Council Directive (EU) 2016/1164 of July 12, 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market (the ATAD Directive). For further information on the CFC rules under the ATAD Directive, see 7450 T.M., *Business Operations in the European Union — Taxation*, section VI.B.5. Controlled Foreign Company Rules.

(2) Current Rules

The current CFC regime was adopted by Act No. 1180 of June 8, 2021, and applies in respect of income years commencing on or after July 1, 2021. For the majority of Danish corporate taxpayers, where the income year follows the calendar year, the previous CFC regime applied for the last time to year 2021.

Under the current CFC regime, a Danish parent company must include in its taxable income the entire positive income of a subsidiary if a number of conditions are fulfilled. These conditions can be summarized as follows:

(i) The CFC income of the subsidiary — as determined under Section 32.4 and Section 32.5 of the Corporate Tax Act — is more than one-third of the taxable income of the subsidiary;

(ii) The corporate group has not elected international joint taxation under Section 31 A of the Corporate Tax Act;

[408] CTA, Sec. 17.3.
[409] CTA, Sec. 8.1.
[410] CTA, Sec. 8.2.

[411] CTA, Sec. 32. Note that the Danish controlled finance corporation (CFC) rules apply regardless of where the subsidiary is resident, i.e., they also apply with respect to subsidiaries resident in Denmark if the conditions for CFC taxation are fulfilled. The abbreviation "CFC" used in the Danish CFC rules is also used to mean "controlled financial corporation" and, unlike in many other jurisdictions, not solely to mean "controlled foreign corporation."

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(iii) The shares in the subsidiary do not fall within the special rules on investment companies found in Section 19 of the Act on Taxation of Gains and Losses on Shares (Danish mark-to-market taxation);

(iv) The shares in the subsidiary are not held by the parent through an investment company in accordance with Section 19 of the Act on Taxation of Gains and Losses on Shares when the parent, or the direct owner of the shares in the subsidiary, is taxed under Section 19 A of the Act on Taxation of Gains and Losses on Shares (Danish mark-to-market taxation);

(v) The shares in the subsidiary are not owned under the special regime available to life insurance companies under Section 13 F of the Corporate Tax Act; and

(vi) The shares in the subsidiary are not held through a labor market-related life insurance company covered by Section 307 of the Act on Financial Business which is subject to tax in accordance with the Pension Yield Tax Act (Danish mark-to-market taxation).

If the subsidiary is a financial company, as defined in Article 2.5 of the ATAD Directive, the parent is only taxable on the subsidiary's CFC income if more than one-third of the CFC income is derived from transactions with the parent or the parent's associated parties.

The subsidiary's CFC income is determined as the sum of the subsidiary's:

(i) Taxable interest income and interest expenses deductible for tax purposes, and taxable and/or deductible commissions and fees relating to debts, loans and indemnities of the subsidiary;

(ii) Taxable gains and deductible losses on debts and instruments, etc. within the scope of the Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments;

(iii) Income from intangible assets in the form of either:

(a) Royalty payments and sums received from the sale of intangible assets (including gains and losses realized through the sale of carbon dioxide (CO_2) emission quotas), insofar as the sums in question are received from group companies and/or do not derive from the research and development (R&D) activities of the subsidiary; or

(b) Any other income from intangible assets (including "embedded royalties," which, according to the explanatory notes to the law, are income derived from intellectual property (IP) embedded in the sales price of goods and services sold). An exemption has been introduced (the "partial substance test"), which means that, as the point of departure, such "other income from intangible assets" is not included in the calculation of the CFC income if the subsidiary carries on significant operating activities related to the IP supported by personnel, equipment, assets, premises, etc. The exemption does not apply if the subsidiary manages the ownership and potential sales and distribution functions in relation to the IP, while the other functions relating to the assets are insignificant or are carried out in the country where the subsidiary is resident. Nor does the exemption apply if the subsidiary is resident in a country that does not exchange information with Denmark, unless the income derives from IP that is mainly the result of R&D activities conducted by the subsidiary itself or by a group company resident in the same country. If the parent wishes to exclude "other income from intangible assets" from the calculation of the subsidiary's CFC income, the parent is required to make an election to this effect when submitting its tax return for the relevant income year, and must, no later than 60 days following the tax return submission deadline, file documentation supporting its claim to be able to rely on the exclusion rule;

(iv) Taxable distributions;

(v) Taxable/deductible gains and losses on shares;

(vi) Tax losses with respect to the categories of income listed above;

(vii) Taxable income relating to finance leasing and/or the sale of assets used in such activities;

(viii) Taxable income derived from insurance, banking and mortgage activities; and

(ix) Income from invoicing companies that acquire income from goods and services bought from or sold to associated parties, when the activities of the invoicing companies in question add little or no economic value to the transactions.

For the purpose of the CFC regime, a broad definition of "control" applies in respect of when a company is considered to be a parent company. The control test is based on Article 2.4 of the ATAD Directive (however, with certain extensions in the Danish implementation). A company is considered a parent of a subsidiary if: (i) the parent — on its own, or together with its associated parties — directly or indirectly holds more than 50% of the voting rights in the subsidiary, (ii) directly or indirectly owns more than 50% of the share capital of the subsidiary or (iii) has a right to receive more than 50% of the profits of the subsidiary. The definition of "associated parties" includes separate taxable entities in which the parent directly or indirectly holds an interest in the form of at least 25% of either the voting rights or the share capital, and entities of whose profits the parent has a right to receive at least 25%. If the parent is acting together with an individual or a separate taxable entity in respect of voting rights or ownership of the share capital in another separate taxable entity, the parent is considered to possess such voting rights or ownership of the share capital in the relevant other separate taxable entity.

The parent company may elect only to include in its income the subsidiary's CFC income instead of the subsidiary's entire income. This election must be made no later than when submitting the tax return for the first income year in which the parent is subject to CFC taxation. The election is binding for a period of five years and applies to all subsidiaries if made.

Detailed rules are set out in Section 32.4 as to how the subsidiary's income must be computed for the purpose of the CFC regime.

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(3) Prior Rules

Under the CFC regime applicable to income years commencing prior to July 1, 2021, which does not reflect the rules under the ATAD Directive, a Danish parent company must include in its taxable income the entire positive income of a subsidiary if a number of conditions are fulfilled. These conditions can be summarized as follows:

(i) The CFC income of the subsidiary — as determined under Section 32.4 and Section 32.5 of the Corporate Tax Act — is more than one-half of the taxable income of the subsidiary;

(ii) The accounting value of the financial assets of the subsidiary exceeds 10% of the value of the accumulated assets of the subsidiary as an average over the income year;

(iii) The shares of the subsidiary do not fall within the special rules on investment companies found in the Act on Taxation of Gains and Losses on Shares; and

(iv) The shares in the subsidiary are not owned under the special regime available to life insurance companies under Section 13 F of the Corporate Tax Act.

A further requirement is that the parent and subsidiary may not be subject to international joint taxation under Section 31 A of the Corporate Tax Act.

The subsidiary's CFC income is determined as the sum of the subsidiary's:

(i) Taxable interest income and interest expenses deductible for tax purposes;

(ii) Taxable gains and deductible losses on debts and instruments, etc. within the scope of the Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments;

(iii) Taxable and/or deductible commissions and fees relating to debts, loans and indemnities of the subsidiary;

(iv) Taxable distributions;

(v) Taxable/deductible gains and losses on shares;

(vi) Royalty payments and sums received from the sale of intangible assets, insofar as the sums in question are received from group companies and/or do not derive from the research and development (R&D) activities of the subsidiary;

(vii) Tax losses with respect to the categories of income listed above;

(viii) Taxable income relating to finance leasing and/or the sale of assets used in such activities;

(ix) Taxable income derived from insurance, banking and mortgage activities; and

(x) Gains and losses realized on the sale of carbon dioxide (CO_2) emission quotas.

g. Exclusions from Gross Income

Any exclusion from gross income must be specifically provided for in the tax law. Among the exclusions worth noting are exclusions for:

(i) Gains on the sale of shares in group companies or subsidiaries sold by a corporation (see b.(1), above);

(ii) Dividends received by a corporation on its own stock;

(iii) Certain dividends received (as discussed in c., above); and

(iv) Income and gains derived from foreign branch activities and foreign real property (see d., above).

4. Deductions

The National Income Tax and Wealth Tax Act contains a general definition of business and other deductible expenses. Under that Act, expenses are deductible if they are incurred during the business year in order to "obtain, secure and maintain" income in the year in question.[412] This general definition has given rise to numerous administrative decisions and court cases.

a. Business Expenses

(1) Administrative

The costs of maintaining the organization of a corporation's business are deductible expenses. Administrative expenses in relation to budgets, long-term planning, marketing, etc., are considered to be integral to securing annual income and are, thus, deductible business expenses.

However, if a particular expense can be allocated to particular capital equipment, for example, a new industrial plant, the expense will be allocated to that plant and considered to be a part of the costs in connection with the building or completion of the plant. This also means that if the plant is later closed down, the expenses will be considered to be a capital and not a deductible loss.

(2) Travel and Entertainment

All business travel expenses are deductible if the business conducted in connection with, or as a result of, the travel is a part of the normal operations of the company in question. Business travel expenses are considered to be auxiliary to other expenses and their proper allocation will be dependent on the main purpose of the trip in question.[413] Travel expenses incurred for purposes of promoting sales of goods or services are deductible even if the purpose of the travel is to procure a profit in later years.

Twenty-five percent of business-related entertainment expenses is deductible.[414]

(3) Interest and Royalties

Interest is deductible without limitation or ceiling and, in principle, regardless of the purpose of the loan concerned or the rate of interest, but always subject to the debt-to-equity requirements[415] and to Sections 11B and 11C of the Corporate Tax Act.[416] In addition, late payment interest and charges on taxes

[412] NIT, Sec. 6a.
[413] TAA, Sec. 8.1.
[414] TAA, Sec. 8.4.
[415] CTA, Sec. 11.
[416] CTA, Sec. 11.

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are generally not deductible. Furthermore, interest payable in certain specific situations, for example, interest on loans issued by the municipalities for the payment of property taxes, has explicitly been made non-deductible by law.

The debt-to-equity provisions apply to Danish incorporated companies that obtain loans from or secured by a controlling legal entity ("controlled debt"). The limitation provision also applies to loans made by a head office to its Danish branch.[417]

For purposes of these provisions, an entity is deemed to control another entity if the entity, directly or indirectly, owns more than 50% of the share capital or, directly or indirectly, controls more than 50% of the votes in the controlled entity.[418] A person is deemed to be foreign if the person is deemed to be a resident of a foreign country under the terms of an applicable tax treaty. A company is deemed to be a member of a group of companies if the same group of shareholders can exercise control over it and the other companies in the group.

If the ratio of a company's debt to its equity at the end of an income year exceeds 4:1, interest expenses and currency losses relating to the amount of controlled debt that would need to be converted into equity to meet the 4:1 ratio will be non-deductible.

> *Example:* If a company has total debt of DKK 500 million and net equity of DKK 100 million, representing a 5:1 ratio, DKK 20 million would need to be converted to reach a 4:1 ratio (480:120). An amount corresponding to 20/500 of the total interest expenses incurred would consequently be non-deductible for tax purposes.

The limitation only applies if the controlled debt exceeds DKK 10 million (approximately US$1,4 million).

The limitation does not apply with respect to a loan made by an individual who is a member of a legal entity that is transparent for tax purposes or if the taxpayer can demonstrate that a loan on the same terms could be obtained from an independent third party. If the controlled debt is owed to a group company and to third parties, the interest on the controlled debt is limited first and then the interest on the third-party debt.[419]

The debt-to-equity provisions apply to debt owed to or secured by Danish as well as foreign companies, but only with respect to Danish companies that are considered members of the same group, without including the foreign shareholders.[420] The consolidation rule thus only applies within a group of companies as defined above, even though a foreign group may have established a number of divisions of its business in Denmark through subsidiaries or PEs.

Currency losses that are disallowed as a deduction under the debt-to-equity provisions may nevertheless be carried forward and set off against subsequent currency gains made on the same loan.

Net equity for purposes of determining the debt-to-equity ratio comprises the market value of the assets of the company less its debt obligations. Capital other than share capital provided by a foreign controlling party may only be taken into consideration to the extent no repayment of that capital can be claimed for at least two years.[421] Debt comprises all debt obligations, including loans from both controlling and unrelated parties.

The limitation also applies if a loan is provided by an independent third party but guaranteed by a controlling party. The loan is then considered controlled debt.

Even though the excess interest payment is not deductible as such for Danish tax purposes, the payment is not reclassified as a dividend distribution subject to withholding tax. The excess payment will also continue to be treated as interest under an applicable double taxation agreement.

A consolidation provision is triggered if a foreign party controls a group of companies. Danish companies are considered to be members of the same group if the same shareholder directly or indirectly controls more than 50% of the share capital in each company, or directly or indirectly controls more than 50% of the votes in each company. For purposes of the debt-to-equity requirements in the case of a consolidation, all of the assets and liabilities of the companies in question are taken into consideration. However, Danish companies' holdings of shares in other companies that are consolidated, as well as intercompany loans and any guarantees between these companies, are disregarded.[422] The explanatory notes accompanying the Bill introducing the debt-to-equity provisions illustrate the application of these provisions with the following example:

> *Example:* If a foreign company sets up a Danish company (Subsidiary 1) with a share capital of DKK 1,000 and grants Subsidiary 1 a loan of DKK 4,000, Subsidiary 1 may set up a subsidiary (Subsidiary 2) with a share capital of DKK 5,000 allowing Subsidiary 2 to obtain an intercompany loan of DKK 20,000. Subsidiary 2 may in turn establish a subsidiary (Subsidiary 3) with a share capital of DKK 25,000, which may borrow DKK 100,000 from a related company. On an individual basis, all these companies meet the debt-to-equity requirement of 4:1. However, as a consequence of the consolidation, the holdings of Subsidiary 1 in Subsidiary 2, and of Subsidiary 2 in Subsidiary 3, are disregarded. Interest can, therefore, only be deducted on a debt equivalent to DKK 4,000, which is four times the equity of Subsidiary 1. The total amount of interest that cannot be deducted is divided among the subsidiaries in proportion to their share of the total interest expense and exchange losses.

The consolidation provision applies only to Danish companies that meet the group test and does not include holdings of foreign companies and an ultimate Danish holding company.

There is also a second limitation provision on the deduction of interest based on the value of assets: net financing expenses are limited to an amount corresponding to a certain percentage of certain assets.[423] Under this limitation provision, interest expense of up to DKK 21.3 million is fully deductible. However, net interest in excess of DKK 21.3 million may only be deducted to the extent the interest payments do not exceed

[417] CTA, Sec. 11.5.
[418] TAA, Secs. 2.2 and 16H.2.
[419] CTA, Sec. 11.1.
[420] CTA, Sec. 11.4.
[421] CTA, Sec.11.3.
[422] CTA, Sec. 11.4.
[423] CTA, Sec. 11B.

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the taxable value of the company's assets multiplied by a standard interest rate.

This limitation provision does not apply to the extent the net finance expenses are losses on debt and financial instruments that exceed the interest income of the taxpayer.[424] Such losses may be carried forward and set off against gains on debt and financial instruments and interest income in subsequent income years. If the limitation provision does apply, meaning debt and financial instrument losses are lower than interest income, such losses are included first when calculating the limit before factoring in other interest deductions.[425]

The standard interest rate used for the calculation of the limitation is calculated annually by the Copenhagen Stock Exchange based on the average yield of listed and fixed yield bonds denominated in Danish kroner. The calculated interest is published at the latest on December 15 of the year prior to the year in which the interest rate is to be applied.

The net finance expense is the negative total of the following kinds of income and expenses:

(i) Taxable interest and interest expenses, except for interest received from trade debtors and interest paid to trade creditors.

(ii) Deductible banking fees.

(iii) Taxable gains and losses on debentures, debt and financial instruments subject to the Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments. Losses on claims for goods and services supplied are disregarded and, if the debtor company is a member of the same group as the creditor company, gains are not included. Banks and other financial institutions may also disregard such gains and losses on loans made, provided the debtor is not a member of the same group as the bank/financial institution.

(iv) Interest calculated on assets in financial leasing agreements as per the definitions set out in International Accounting Standard (IAS) 17. Such interest must be deducted from other financial income of the lessee and included in the financial income of the lessor.

(v) Taxable gains and losses on shares and taxable dividends and distributions subject to taxation under Section 16B of the Tax Assessment Act. If the net amount of these items is negative, the loss cannot be deducted for purposes of calculating the net finance expenses but is carried forward. Further, capital gains on shares are excluded from the calculation if the taxpayer is taxed as a trader (for example, a bank). Income subject to CFC taxation under Section 32 of the Corporate Tax Act is *not* included in the calculation of the net finance expense.[426]

For purposes of calculating the limitation based on the taxable value of a company's assets, the taxable value of the assets is computed at year end. Depreciable assets are included at book value and non-depreciable assets at acquisition cost, including any improvements. The book value of financially leased assets is also included. Shares, financial instruments and cash are not included.

Domestic companies are subject to mandatory joint taxation, while a Danish parent may elect, but is not required, to include its foreign subsidiaries in a jointly-taxed group. The assets of jointly-taxed companies are, on the other hand, taken into consideration for purposes of the calculation of the total value of the assets of the group.

If it can be demonstrated that a new subscription of shares in a directly-owned group company is made in connection with the acquisition of a company outside the group, the price paid for the shares subscribed for may be included. Special rules for the calculation of the acquisition price for purposes of determining the net assets of the company apply. The amount that may be included is the lesser of five times the capital contributed or the value that could have been included had the company been jointly taxed with the taxpayer. However, that lesser amount is reduced by the total value of the following:

(i) The market value of shares in Danish companies, PEs in Denmark and real property located in Denmark, owned directly or indirectly by the directly-owned company.

(ii) The acquisition price of real property used for rental purposes, cash and financial instruments.

(iii) The value of shares in Danish companies, PEs in Denmark and real property located in Denmark subsequently acquired, whether directly or indirectly.

(iv) Proceeds from the sale of directly- or indirectly-owned shares, unless the company is sold to a group company. This does not, however, apply in the case of a sale to a jointly-taxed company PE. The balance is only reduced to the extent the ownership share is smaller in the hands of the acquiring company than in the selling company.

(v) Rules similar to those set out above under (iv) apply in the case of the sale of a business.

(vi) Distributions of dividends from the directly-owned company to jointly-taxed companies that exceed the amounts that reduced the balance in accordance with (i), (iii) and (iv).

(vii) The distribution of preference shares by the directly-owned company, or by companies in which that company owns shares, whether directly or indirectly, to other group companies that are not jointly taxed, to the extent the jointly-taxed company has a lesser ownership share in the receiving company than in the distributing company.

(viii) A similar provision to that set out above under (vii) applies to contributions made by the directly-owned company.

Also included for purposes of computing the taxable value of the company's assets are the net value of work-in-progress, inventory and outstanding claims for goods sold. If the taxpayer is taxed as a trader with respect to capital gains on shares, the value of such shares must also be included. Financial contracts may be included to the extent they are made in connection with the business activities of the taxpayer. The value of tax losses that may be carried forward may be included without any reduction under Sections 11B and 11C of the Corporate Tax Act.

[424] CTA, Sec. 11B.1.
[425] CTA, Sec. 11B.1.
[426] CTA. Sec. 11B.4.

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Finally, assets leased under a finance lease may be included by the lessee but not the lessor.

Life insurance companies are not subject to the limitation provision contained in Section 11B of the Corporate Tax Act.

The debt-to-equity provisions in Section 11 of the Corporate Tax Act are to be applied before the limitation provision contained in Section 11B, which, in turn, is to be applied before the limitation provision contained in Section 11C (see below).

According to a third limitation provision, taxable income before earnings, interest, taxes, depreciation and amortization (EBITDA) can only be reduced by up to 30% (after any limitation under the provisions of Section 11 and 11B has been applied). Under this limitation provision, interest expense of up to DKK 22,313,400 is always allowed as fully deductible.

A withholding tax of 22%[427] is imposed on interest paid on controlled debt (see VI.B.1., below).

Royalty payments under licensing or similar agreements are deductible and, in principle, there are no limitations as to the rate of the royalty; for further details concerning intercompany transactions and transfer pricing, see XII., below.

Royalty payments are subject to a 22% withholding tax,[428] unless relief can be claimed under the EU Interest and Royalties Directive[429] or an applicable tax treaty. The EU Interest and Royalty Directive may only be invoked if the company receiving the royalty is the beneficial owner of the royalty payment and is a company resident in another EU Member State that is associated with the company paying the royalty or a PE situated in another EU Member State. A company resident in a Member State will be treated as the beneficial owner of interest or a royalty only if it receives the payment for its own benefit and not as an intermediary, such as an agent, a trustee or an authorized signatory for some person other than the company. Under Article 3 (b) of the EU Interest and Royalty Directive, the company paying the royalty and the receiving company are associated if at least:

(i) The first company has a direct minimum holding of 25% in the capital of the second company;

(ii) The second company has a direct minimum holding of 25% in the capital of the first company; or

(iii) A third company has a direct minimum holding of 25% both in the capital of the first company and in the capital of the second company.

Holdings must involve only companies resident in the European Union.

For further information on the EU Interest and Royalty Directive, refer to 7450 T.M., *Business Operations in the European Union — Taxation*, section V. Interest and Royalty Directive.

It should be noted that interest and royalties are deductible on the due payable date, irrespective of the period that they cover. However, a corporation may choose to use an accrual method, provided the same method is used every year and for all interest and royalties paid or received.

(4) Taxes

Corporate income taxes are not deductible for income tax purposes, whereas property taxes paid in connecting with the letting of real property and payroll duty paid in connection with the supply of services that are exempt from value added tax (VAT) may be deducted as a business expense. VAT that cannot be recovered as input VAT may also be deducted as a business expense for income tax purposes. Other taxes and duties are generally not deductible for income tax purposes.

(5) Depreciation and Amortization

Depreciation of tangible and intangible assets may be claimed under the Tax Depreciation Act.

(a) Provisions Applicable to Operating Equipment and Vessels

To claim depreciation of operating equipment or a vessel under the Tax Depreciation Act, the taxpayer must be the owner of the equipment or vessel concerned.[430] However, this requirement does not apply to computer software that the taxpayer has acquired an indefinite license to use.

A further condition for claiming depreciation is that the operating equipment or the vessel must have been delivered to the taxpayer.[431] The operating equipment or the vessel is deemed to have been so delivered, if it is:

(i) Delivered to an ongoing business;

(ii) To be used for purposes of the business; and

(iii) Completed to such a degree that it can be used for purposes of the business.

If there is a change in the use of a depreciable asset so that the asset ceases to be or commences to be used exclusively for commercial purposes, the change in use is deemed to be a sale or purchase of the asset concerned.[432] Specifically, there is a deemed sale when an asset ceases to be used exclusively for commercial purposes and a deemed acquisition when an asset begins to be used for commercial purposes. The asset is deemed to have been sold or acquired at its market value at the time the use is changed.[433] If a taxpayer uses all assets exclusively for commercial purposes, the basis for depreciation is the total value of all depreciable assets. The depreciation for the year is based on the balance of the depreciable asset account at the beginning of the year increased by any purchases made and delivered, and reduced by any sales made and delivered, during the income year.[434]

The balance may be depreciated at a maximum rate of 25% per annum (declining balance depreciation method).[435] Certain reduced rates, however, apply to larger assets with a longer expected life span.

[427] TSA, Sec. 65D.

[428] TSA, Sec. 65C.

[429] Council Directive 2003/49/EC of June 2, 2003, on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

[430] TDA, Sec. 2. It is a general condition for claiming depreciation that the assets be owned by the taxpayer.

[431] TDA, Sec. 3.

[432] TDA, Sec. 4.

[433] TDA, Sec. 4.

[434] TDA, Sec. 5.2.

[435] TDA, Sec. 5.3.

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Under Section 5B of the Tax Depreciation Act, vessels used for the commercial transportation of passengers and goods having a tonnage of 20 tons or more are depreciated separately at the rate of 12% if they are:

(i) Owned by a Danish company;

(ii) Owned by a company incorporated in the European Union; or

(iii) Hired out on a bareboat basis or acquired for such purpose.

New vessels covered by (i) and (ii) and not subject to taxation under the Act on Taxation of Shipping Income (see 11., below) may be depreciated at the rate of 20% in the first year.[436]

Under Section 5C.1 of the Tax Depreciation Act, a reduced rate of 15% applies to the following assets:

(i) Vessels used for the commercial transportation of passengers and goods having a gross tonnage of 20 tons or more that are not subject to Section 5B.

(ii) Aircraft and rolling stock.

(iii) Oil rigs, production platforms and other installations for preliminary surveys, exploration, extraction, and the refining of oil and gas.

(iv) Fixed facilities for the production of heat and electricity having a capacity of more than 1 megawatt (MW) and installations for pumping water for the general supply of water. Wind turbines having a capacity of more than 1 MW that are acquired after January 1, 2013, are also subject to depreciation at the reduced rate of 15%. Wind turbines having a capacity of less than 1 MW are not subject to this limitation provision and may be depreciated at the ordinary rate of 25%.[437]

(v) Water treatment plants.

Under Section 5C.2 of the Tax Depreciation Act, the following infrastructure facilities are subject to depreciation at a reduced rate of 7%:

(i) Facilities for the transportation, storage, and distribution of electricity, water, heat, oil, gas and wastewater;

(ii) Facilities for the distribution of radio and television broadcasts and communications; and

(iii) Fixed railway equipment.

The reduced rate does not apply to the extent the item concerned is depreciable under the rules applicable to buildings and installations therein and to any computer hardware or software incorporated in the items referred to above. The above reduced rates are effective as of 2016.

No depreciation may be claimed in the year of purchase with respect to a depreciable asset used by a company in Denmark incorporated for leasing purposes or let at the time of its acquisition. In the following income year, depreciation of up to 50% of the purchase price of the asset may be claimed. For purposes of calculating depreciation in subsequent years, the purchase price less the depreciation in year two is added to the business's depreciable basis.[438]

Under Section 5D of the Tax Depreciation Act, a taxpayer may elect to depreciate operating equipment acquired on or after November 23, 2021 and no later than December 31, 2022, on a separate balance at 116% of the acquisition price of the operating equipment in question. The balance may be depreciated at a maximum rate of 25% per annum (declining balance depreciation method).[439]

Certain items may be written off in the year in which they are acquired instead of their value being included in the depreciation basis.[440] This applies to:

(i) Operating equipment, the useful life of which cannot be expected to be more than three years.

(ii) Operating equipment, the purchase price of which does not exceed DKK 33,100 (2024) for purchases made on or after November 23, 2020.

Whether a particular part of an asset can operate independently must be taken into account for purposes of determining whether the value of that asset exceeds the threshold. For example, even if neither the value of a personal computer (PC) nor the value of a screen exceeds the applicable threshold, the threshold may still be reached because the PC and the screen are considered to be a single depreciable asset. However, a PC and a printer are considered to be two independent assets.

(iii) Operating equipment and ships used for research purposes, except for operating equipment and ships used for mineral exploration.

(iv) Computer software. This may be written off immediately, irrespective of its value.

An asset referred to above at (i), (ii) or (iv) acquired by a corporate taxpayer for leasing purposes may not be depreciated in the year of acquisition but is fully depreciable in year two.[441]

Expenses incurred in connection with the repair of operating equipment or vessels may be deducted in the year in which they are incurred.[442] If any damage is covered by insurance, the deductible amount is limited to the amount by which the repair expenses exceed the insurance sum received or DKK 33,100 (2024).

If the sale price of a depreciable asset or vessel is less than its original purchase price reduced by the depreciation claimed, the balance may be deducted for income tax purposes. The depreciable basis will be reduced by the loss deducted but may not become negative.[443]

If the depreciable basis becomes negative as a result of the sale of depreciable assets and the negative balance is not included in the taxable income of the taxpayer in the year in which the basis becomes negative, the taxpayer must include the balance of the negative basis in its taxable income in the

[436] TDA, Sec. 5B.2.
[437] TDA, Sec. 5C.4.
[438] TDA, Sec. 5.4.
[439] TDA, Sec. 5D.4.
[440] TDA, Sec. 6.
[441] TDA, Sec. 6.3.
[442] TDA, Sec. 7.
[443] TDA, Sec. 5A.

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following year, unless the taxpayer acquires depreciable assets in that year for an amount at least equivalent to the negative basis.[444]

Taxable depreciation may not be claimed in the year in which a business is sold or otherwise discontinued. Any recaptured depreciation or loss is to be included in the taxable income in the year of termination and is calculated as the difference between: (i) the sale price, including the sale price of assets that are subject to immediate depreciation; and (ii) the depreciable basis at the beginning of the tax year increased by any purchases of depreciable assets during the year of termination. All taxpayers must include the whole of such a gain in their taxable income.

(b) Operating Equipment and Vessels Used Partly for Commercial and Partly for Private Purposes

The depreciable basis is calculated separately for each individual asset used for both private and commercial purposes.

Depreciation may be claimed at an annual rate of up to 25% of the purchase price. The resulting depreciable amount may be deducted, but only to the extent of the commercial use of the asset. If the purchase price of the asset does not exceed DKK 15,600 (2024), then the part of the purchase price that is proportionate to the commercial use may be deducted immediately for tax purposes.

Assets subject to the limitation provisions set out in Section 5C.1 of the Act on Tax Depreciation described in (a), above, may be depreciated at the rate of 15%, while the deprecation rate for assets referred to in Section 5C.2 is limited to 7%.[445] Provisions similar to those described in (a), above, concerning the computation of recaptured depreciation in connection with the sale or termination of a business also apply to assets that are used only partly for commercial purposes.

(c) Real Property

Real property is depreciated for tax purposes on a property-by-property basis.[446] Real property purchased after January 1, 2023, may be depreciated at a rate of up to 3% per annum based on the purchase price of the property (straight-line depreciation method).[447] The rate of depreciation for buildings and installations was previously 4% per annum, but was changed to 3% effective from January 1, 2023 through Act No. 1598 of December 28, 2022, which was subject to express presentation and passed in the Danish Parliament in December 2022.

Real property purchased prior to January 1, 2023, will maintain a 4 % straight-line depreciation, whereas additions or installations added to such properties after January 1, 2023, will be subject to the 3 % depreciation. Consequently, a differentiated appreciation rate may apply towards installations and additions to the same real property.

A transition rule applies towards property owned in ideal shares where such shares are purchased prior to January 1, 2023. Such shares are subject to a “first-in-first-out” principle under which the ideal shares in real property purchased prior to January 1, 2023 — and which are therefore subject to 4 % depreciation — are considered to be the first shares realized when ideal shares are sold after January 1. This rule is of relevance towards real property held through shares in limited partnerships.

If the expected life of the property is less than 33 years, the depreciation rate is increased. The rate is calculated as an even rate of depreciation over the expected life span of the building. For example, if the expected life of the property is 20 years, the maximum rate of depreciation is 5%.[448]

The following kinds of real property may not be depreciated:[449]

(i) Property used as office space;

(ii) Property used as a bank, a mortgage institution, a credit institution, an insurance company, a stock exchange, premises of a regulated market and the like within the financial sector, including an office used for payment transactions;

(iii) Real property used for postal service purposes, except for property where the sorting of mail can be said to be industrialized;

(iv) Property used for dwelling and associated purposes, except for hotels and camping grounds, and cottages and buildings used for social services, for example, subsidized housing;

(v) Hotels and nursing homes that are divided into freehold units; and

(vi) Hospitals, birth clinics, medical clinics, dental clinics and other health care businesses.

Where office buildings, or office premises within a building, are located in connection with property used for commercial purposes that may be depreciated for tax purposes, the office buildings/office spaces may be depreciated in the same manner as the depreciable premises if the offices are used for the business conducted in the depreciable premises.[450]

Installations made for purposes of a building can be depreciated in accordance with the rules applicable to the kind of building concerned. Other installations that are used exclusively for commercial purposes may be depreciated at a rate of up to 3% per annum, even if part of the property is not depreciable but is being used for commercial purposes. The distinction between installations and operating equipment is not clearly defined. If purchased prior to 1 January 2023, the applicable rate is 4% per annum (cf. also above regarding transition rules).

Expenses incurred in connection with the artistic decoration of buildings that are exclusively used for commercial purposes, except for the letting of residential buildings, may be depreciated at a rate of 3% per annum.[451] If purchased prior to January 1, 2023, the applicable rate is 4% per annum (cf. also above regarding transition rules). The artistic work must be fixed to the building or its close surroundings. If there is doubt

[444] TDA, Sec. 8.
[445] TDA, Sec. 11.2.
[446] TDA, Sec. 14.1.
[447] TDA, Sec. 17.1.
[448] TDA, Sec. 17.2.
[449] TDA, Sec. 14.2.
[450] TDA, Sec. 14.3.
[451] TDA, Sec. 44.A.

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as to whether a work may be considered "artistic," the DTA may request a statement from the Royal Academy of Arts.

Real property or an installation is deemed to be acquired in the income year in which the building or installation is acquired, erected and used commercially. If these events occur in different income years, depreciation is not available until the year in which all three conditions are fulfilled. An expense incurred in connection with refurbishment or improvements may be depreciated from the year in which the expense is incurred and the refurbishment or improvement is completed and used commercially.[452]

The expenses of rebuilding or improving real property may be depreciated separately. The expenses are not included in the original purchase price of the property. Such expenses may, however, be written off immediately if they do not exceed 4% of the taxable basis of the building to which they relate.[453] These deductions may be taken even though the refurbishment or improvement is not yet used for commercial purposes. Such expenses are not considered to be tax depreciation and are not included in the taxable basis for purposes of calculating any gain or loss in connection with a sale.

If only a part of real property is used for depreciable purposes, a proportionate part of the depreciation may be deducted for tax purposes. However, if less than 25% of the property area is used for depreciable purposes, the property can be depreciated only if the area in question exceeds 300 square meters.[454]

Maintenance expenses may be deducted in full in the year in which they are incurred.

The loss suffered when real property is disposed of at a price lower than the depreciable balance is deductible for tax purposes.[455] A similar provision applies with regard to a loss suffered on the disposal of an installation. However, if a building owned by one or more individuals is sold at a loss to a company controlled by the seller(s), no deduction may be claimed for the loss.[456] A company is deemed to be so controlled if the individual(s) selling the building own(s) more than 50% of the shares or control(s) more than 50% of the votes of the company.

Property exploited as a quarry is subject to specific provisions.

(d) Advance Depreciation

Operating equipment and vessels that are exclusively used for commercial purposes and that may be depreciated under Chapter 2 of the Act on Tax Depreciation qualify for advance depreciation under Chapter 4 of the Act. Advance depreciation is available if:

(i) The taxpayer either has entered into a binding agreement concerning the building of the equipment or vessel or plans to produce it in his or her own business;

(ii) The delivery or completion of the equipment or vessel under the agreement is made, at the earliest, in the first, and at the latest, in the fourth, income year after the year in which the order is placed; and

(iii) The total price of the equipment or vessel, or if it is produced in the taxpayer's own business the cost of production, exceeds DKK 1,774,000 (2024).[457]

A company entering into such an agreement that intends to lease the equipment or vessel can claim advance depreciation, at the earliest, in the year after the equipment or vessel is ordered.[458]

Advance depreciation of up to 15% of the depreciable basis can be taken. However, the advance depreciation may not exceed 30% of the purchase price.[459] When the equipment or vessel is supplied, the depreciable basis is reduced by the advance depreciation taken.

Advance depreciation cannot be claimed on equipment or vessels subject to the limitation provisions set out in Sections 5B and 5C of the Act on Tax Depreciation[460] (see (a), above).

(e) Depreciation of Goodwill, Patents and Copyrights

The purchase price of goodwill, patents, knowhow, trademarks and copyrights may be depreciated at the rate of 1/7 per annum.[461] This also applies to expenses incurred in connection with agreements concerning the relinquishment of an agency and restrictive covenants when the payment is made in a lump sum. However, if the payment is less than 5% of the total salary expenses of the taxpayer's business in the income year concerned, the expense may be deducted in full.[462]

Payments made for a license to conduct preliminary surveys, exploration and the extraction of hydrocarbons may be depreciated *pro rata* over the term of the license.[463]

Goodwill, patents and copyrights may not be depreciated in the year in which they are sold.[464] If such assets are transferred between an individual and a company or between companies where one of the parties has a controlling interest in the other, the basis for depreciation is reduced by up to an amount equal to the taxable gain realized by the seller and any non-depreciated portion of the seller's original purchase price. A "controlling interest" is defined as direct or indirect ownership of more than 50% of the shares or direct or indirect control of more than 50% of the votes.[465]

Certain types of IP may be depreciated in full in the year of acquisition. This applies to knowhow and patents acquired in connection with the taxpayer's business.[466] Expenses incurred in licensing IP and for knowhow and patents may also be depreciated in full.

(6) Quotas

Rules have been introduced under the Act on Tax Depreciation to facilitate the sale of CO_2 quotas and certain fish quotas.

[452] TDA, Sec. 18.1.
[453] TDA, Sec. 18.2.
[454] TDA, Sec. 19.4.
[455] TDA, Sec. 21.
[456] TDA, Sec. 21.5.
[457] TDA, Sec. 29.
[458] TDA, Sec. 30.
[459] TDA, Sec. 31.
[460] TDA, Sec. 28.3.
[461] TDA, Sec. 40.1.
[462] TDA, Sec. 40.3.
[463] TDA, Sec. 40.2.
[464] TDA, Sec. 40.4.
[465] TDA, Sec. 40.5.
[466] TDA, Sec. 41.

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A taxpayer that acquires a quota entitling the taxpayer to produce, supply, use, explore or catch a specific amount of a certain product or resource or to discharge a specific amount of products or resources, including polluting waste products, provided the quota may be used only once, may deduct the entire price paid for the quota in the income year in which the quota is exploited.[467]

Gains and losses realized on the sale of such a quota are taken into account for tax purposes for the income year in which the quota or a share of the quota is sold or expires without being exploited.[468] If no consideration is paid for the quota, the purchase price is zero for tax purposes. Otherwise the purchase price is the basis for the calculation of the gain. The sales price for quotas exploited or expired is also nil for tax purposes. For purposes of calculating gains or losses, the FIFO principle applies.

A taxpayer that acquires a quota entitling the taxpayer continuously over a specific period to produce, supply, use, explore or catch a specific amount of a certain product or resource or to discharge a specific amount of products or resources, including polluting waste products, may depreciate the entire price paid for the quota at the rate of 1/7 per annum from the income year in which the agreement was completed.[469] If the quota runs for less than seven years, the purchase price may be depreciated *pro rata* over the term of the quota.[470]

Special provisions apply concerning the depreciation of EU milk quotas.[471]

(7) Contracts for Shipping Vessels and Plant and Machinery

Gains or losses realized by a taxpayer on the sale of, or the relinquishment of rights under, a contract for the supply of a shipping vessel or other asset that will be used, exclusively or partly, for commercial purposes and that may be depreciated under the Act on Tax Depreciation, are to be included in taxable income in the year in which the gain or loss is realized, provided certain conditions are fulfilled.[472] The gain or loss is calculated as the difference between the price paid for the contract and the sales price. Gains and losses are calculated disregarding any advance depreciation.

If the sale takes place at a time when the vessel or asset is not completed to such a degree that it can be used for purposes of the business of the taxpayer, any gain or loss realized on the sale is to be included in taxable income in the year of the sale.[473]

(8) Obsolete Equipment

The Act on Tax Depreciation contains no special provision for obsolete equipment. The cost of such equipment, therefore, remains a part of the balance on which tax depreciation is taken, until it is sold. For further, see V.B.4.a.(5)(a), above.

[467] TDA, Sec. 40A.1.
[468] TDA, Sec. 40A.2.
[469] TDA, Sec. 40B.1.
[470] TDA, Sec. 40B.2.
[471] TDA, Sec. 40C.
[472] TDA, Sec. 44C.1.
[473] TDA, Sec. 44C.2.

(9) Charitable Donations

A Danish corporation, like any other taxpayer, may deduct up to DKK 18,300 (2024) for contributions to general charitable organizations.[474]

A Danish corporation may also deduct in full contributions exceeding DKK 500 if the contributions are made to a cultural institution without any consideration being given by the institution, the contributions are made to facilitate the cultural object of the institution and the institution accepts the gift and reports the grant to the DTA.[475]

(10) Capital Losses

Generally, capital losses are not deductible. Losses on assets that qualify for depreciation are, however, generally deductible.[476] A deduction may be claimed whether the loss is incurred during the operation of a business or in connection with the termination of a business.

Gains on shares are generally tax-exempt and losses are to the same extent not deductible. (For further details, see 3.b.(1), above.)

Capital losses related to land and non-depreciable buildings may be set off only against capital gains from land and buildings.

(11) Casualty Losses

A loss resulting from a casualty will normally be deductible, but the method of deduction will vary depending on the nature of the asset in question.

Insurance proceeds paid to a corporation because of a casualty must normally be treated as taxable income. However, the details of the tax treatment vary depending on the nature of the asset in question. Insurance proceeds received as compensation for fire damage to property are not taxable if the property is rebuilt with the insurance proceeds, provided:

(i) The building is rebuilt at the same location as the damaged building; and

(ii) The rebuilding takes place in the income year in which the accident occurred or the following year. The deadline for rebuilding, however, expires at the earliest in the income year following the year in which the damages payable by the insurance company were finally determined.[477]

The DTA may, on application, grant an extension of the deadline. If the insurance proceeds exceed the rebuilding costs, the acquisition cost of the property is reduced by the excess.[478]

Similar provisions apply with regards to depreciation. The basis for taxable depreciation is not adjusted for any insurance proceeds, provided above conditions (i) and (ii) are fulfilled[479] If the amount used to rebuild is in excess of the insurance sum

[474] TDA, Sec. 8A.
[475] TAA, Sec. 8S.
[476] TDA, Sec. 40.6.
[477] TGRP, Sec. 10.1.
[478] TGRP, Sec. 10.3.
[479] TDA, Sec. 24.

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received, the balance for taxable depreciation for tax purposes is increased; if the amount is lower, the balance is reduced.[480]

(12) Reserve Accounts

For tax purposes, a Danish corporation may not allocate any amount to a general reserve account.

(13) Bad Debts

Losses on bad debts are deductible provided the debts are trading debts and the losses have actually occurred. An anticipated loss is not deductible, unless the corporation can prove that it is very likely to lose the relevant claim or a substantial part of it, for example, if the debtor has been declared bankrupt and the trustee in bankruptcy has confirmed that no dividend will be paid to the ordinary creditors.

A corporation that has a substantial number of debtors and can prove that it generally sustains a loss every year may be allowed to deduct an agreed percentage of its claims. A parent company may not deduct losses on loans made to a Danish or foreign subsidiary irrespective of whether the loan is made in Danish currency or foreign currency.[481] For further details, see V.B.3.b.(3), above.

(14) Inventory Write-Downs

Under the Inventory Valuation Act,[482] the general principle for the valuation of inventory for tax purposes is the FIFO method. The LIFO method combined with base stock is not admissible under the Inventory Valuation Act.

The Inventory Valuation Act allows a corporation to choose between market price, which is identical to the repurchase price, and cost price including freight, duty and nonreturnable wrapping or production cost, including allocable overheads.[483] A corporation may choose whichever method is the more advantageous, may choose to use different methods for different groups of inventories, and are free to change methods for groups of inventories from year to year.

Obsolete inventory, which includes slow moving parts, may, in accordance with administrative guidelines, be written down to 50% in year one, to 25% in year two, and to 0% in year three. Goods are considered obsolete if they are technically or economically obsolete, and the turnover has been reduced significantly in comparison to the usual turnover for similar goods.

No allowances are granted for tax purposes.

(15) Rents

A Danish corporation may deduct payments under a contract for the rental of real property, cars and other leased assets, provided the rented items are used for business purposes.

(16) Salaries, Wages and Directors' Fees

Salaries and wages paid to the employees of a corporation are generally deductible for tax purposes without limitation. The same applies to directors' fees.

On June 9, 2022, the Danish Parliament adopted a new act introducing a ceiling for the deduction of salary expenses (*Fradragsloft over lønninger*) effective from January 1, 2023.[484] The rules will apply to all companies and self-employed persons, and they impose a cap on deductibility of salary expenses exceeding a basic amount of approximately DKK 7,994,500 (2024) per person per income year. The cap will apply to any remuneration, whether in cash or in kind, including stock options and warrants that are taxable as salary under Section 16 or Section 28 of the Tax Assessment Act. The cap will apply at a group level, which means that the basic amount will be allocated proportionally among the relevant group companies, if the employee or director receives the salary from more than one company within the same group. The remuneration paid to the employee or director and the salary expenses exceeding the cap cannot be deducted for Danish tax purposes.

The DTA may consider the salary (or part of the salary) of an employee who is a major shareholder of a corporation to be a dividend and treat it accordingly, so that it would not be deductible for the corporation and would constitute taxable income in the hands of the employee. When considering this kind of situation, the DTA will take into account the total remuneration received by the employee/shareholder in comparison to the amount a corporation would pay an employee performing the same job but not having an interest in the corporation.

(17) Dividends

Payments of dividends or payments deemed to be dividends may not be deducted by the distributing corporation.

b. Other Deductions from Gross Income

(1) Research and Development

Costs incurred by a corporation with respect to R&D may be deducted for tax purposes.[485] The corporation may either deduct the costs in full in the year in which they are incurred or amortize them in equal installments over five years, commencing in the year in which the costs were incurred. Costs that were incurred before the corporation commenced the business in question cannot be deducted until the business is commenced.

Currently, a tax allowance of 108% is available in years 2023 to 2025 for certain qualifying R&D activities. In 2026, the allowance increases to 110%.[486] Qualifying R&D costs comprise, inter alia, product development costs and costs incurred in connection with the creation of specific know-how. Qualifying R&D activities are as follows:

[480] TDA, Sec. 24.4 and 5.
[481] TGLC, Sec. 4.
[482] Consolidated Act No. 1037 of August 24, 2015, the Act on Valuation of Inventory (*Varelagerloven* or VI), as amended.
[483] VI, Sec. 1.
[484] Act No. 905 of June 21, 2022 (Bill L161), amending the Corporate Tax Act, the Tax Administration Act, the Tax Control Act and the Tax Assessment Act (society contribution from the financial sector and deduction ceiling on salaries).
[485] TAA, Sec. 8B.
[486] TAA, Sec. 8B.4.

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(i) Development work, i.e., the application of scientific or technical knowledge to develop new or significantly improved materials, products, processes, systems or services;

(ii) Applied research, i.e., research carried out to acquire new knowledge for purposes of applying it in practice;

(iii) Work in connection with obtaining information about experiments or research; and

(iv) Fundamental research, i.e., research to acquire new knowledge that is not carried out with a view to a specific practical application of that knowledge.

An R&D tax credit scheme is available for loss-making companies.[487] Under the scheme, companies are entitled to a cash payment corresponding to the tax value (22%) of their qualifying R&D costs. The tax loss for the year is reduced by the qualifying R&D costs and no carryforward with respect thereto is allowed. Other costs and losses are, however, unaffected by the tax credit. The maximum obtainable credit is DKK 5.5 million, corresponding to R&D costs of DKK 25 million. The credit is only available to a group as a whole and the credit is calculated on a consolidated group basis.

An application to use the R&D tax credit scheme must be submitted to the DTA in connection with the tax return filing for the relevant year.[488] Under the scheme, the maximum amount that may be credited is the actual incurred costs. The tax credit can, however, be combined with the increased R&D tax allowance, so that the excess amount is included as a tax loss.

Expenses incurred in connection with exploration for raw materials may be deducted. Expenses incurred prior to the beginning of the business may be deducted on a *pro rata* basis over a period of five years from the commencement of business activities.[489] The same rule applies if such expenses for a particular income year exceed 30% of the taxable profits of the taxpayer, calculated without the deductions and/or depreciation described in the preceding sentence, but including interest expenses and currency losses reduced by interest income, taxable dividends and currency gains.

(2) Foreign Currency Gains and Losses

Gains and losses resulting from fluctuations in exchange rates on receivables and liabilities in foreign currency are taken into account in determining taxable income and deductible losses for tax purposes.[490]

Losses incurred with respect to an intra-group loan are generally not deductible (see V.B.3.b.(3), above). The nondeductible amount is, however, calculated without taking account of any changes in currency exchange rates since the loan was made. Gains and losses resulting from fluctuations in exchange rates on inter-company loans are therefore included in the determination of net taxable income.

[487] TAA, Sec. 8X.
[488] TAA, Sec. 8X.4.
[489] TAA, Sec. 8B.2.
[490] TGLC, Sec. 2.

c. Capital Expenditure

Capital expenditure can only be taken as a current deduction in accordance with Section 5.3 of Act on Tax Depreciation (i.e., if the amount of the expenditure is DKK 33,100 (2024) or less for purchases made on or after November 23, 2020). Other capital costs must be expensed or depreciated over a period of time, depending on the nature of the costs. For further information, see V.B.4.a.(5), above.

d. Loss Carryover and Carryback

Net business losses, as computed for tax purposes, including certain capital losses, may be carried forward indefinitely and set off against future taxable income.[491]

Taxable income may be reduced by previous losses to the extent the previous losses do not exceed DKK 9,457,500 (2024). If the loss to be carried forward exceeds this figure, only 60% of the excess amount may be set off against taxable income. The remaining 40% may be carried forward to the following tax year.

It is not possible to carry back a net loss. Special provisions apply with respect to hydrocarbon taxation (see IV.J., above).

Tax returns must be filed electronically and tax losses are, thus, also reported electronically. An electronic registry of tax losses[492] has been established. Information on all tax losses incurred as of 2002 must be filed in the registry. No carryforward is available with respect to losses that have not been filed. If a tax return is not filed electronically but on paper, the return is deemed not to have been filed.

If a debt of a taxpayer is reduced (or the debt acquired by a group related party) according to a composition with the taxpayer's creditors, any tax loss is reduced by an amount equivalent to the amount relinquished.[493] However, the amount by which the loss is reduced is not reduced if:

(i) The amount relinquished is taxable in the hands of the taxpayer;

(ii) The amount relinquished is a tax-free distribution, such as a dividend, or a tax-free group contribution; or

(iii) The creditor is a group company that cannot deduct the loss on the amount relinquished.

A similar provision applies in the case of a capital contribution.[494]

If more than 50% of the share capital of a company at the end of an income year is owned by shareholders other than those at the beginning of an earlier income year in which a tax loss was incurred, taxable income cannot be reduced to an amount lower than the positive capital income of the company.[495]

The net capital income is the total of interest and interest expenses, taxable gains and loss on claims and debentures, tax-

[491] CTA, Sec. 12.
[492] CTA, Sec. 35.
[493] CTA, Sec. 12A.
[494] CTA, Sec. 12C.1.
[495] CTA, Sec. 12D.1.

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able dividends, net taxable gains on shares and certain banking fees, as laid down in Section 8 of the Tax Assessment Act.

If the company, at the time the shares are sold or the share capital is increased resulting in a change of ownership, is not conducting any business activities, no loss carryforward is allowed. If the business activities are carried on by a subsidiary, the parent must own at least 25% of the subsidiary to avoid any limitation of loss carryforward on a change of ownership.

e. Hybrid Mismatches

Denmark has implemented Council Directive (EU) 2016/1164 (the ATAD Directive) and Council Directive 2017/952 (ATAD 2) on anti-tax avoidance and hybrid mismatches with third countries. For further discussion of ATAD and hybrid mismatches, see also 7450 T.M., *Business Operations in the European Union — Taxation*, section VI.B.5. Hybrid Mismatches.

The relevant Danish rules, which are detailed and complex, are contained in Sections 8 D to 8 E of the Corporate Tax Act. The rules replace the former rules under Sections 2 A and 2 B of the Corporate Tax Act, which included the "check-the-box rules" under which an otherwise taxable corporation could be regarded as transparent for tax purposes in Denmark if so regarded in a foreign jurisdiction. The repeal of Section 2 A means that a taxable corporation will no longer be regarded as transparent for Danish tax purposes if so regarded in a foreign jurisdiction, but the double deduction or deduction without inclusion resulting from such difference in tax treatment between Denmark and a foreign jurisdiction or from the difference in tax treatment of financial instruments, as formerly comprised under Section 2 B, is now mitigated by the new hybrid mismatch rules described below.

The hybrid mismatch regime generally aims to mitigate situations in which a difference in the tax treatment of entities, establishments or financial instruments between two jurisdictions leads to one or more of three distinct situations in the form of: (i) double deduction; (ii) deduction without inclusion; or (iii) avoided taxation of income due to a hybrid PE mismatch.

A double deduction is understood to exist if a deduction of the same payment or a similar payment is allowed in both the source jurisdiction and in another jurisdiction.

A deduction without inclusion is understood to exist if a payment or deemed payment between a head office and a PE or between two or more PEs is treated as deductible in one jurisdiction without being included correspondingly for tax purposes in the receiving jurisdiction.

A hybrid PE mismatch is understood to exist where differences in the legislation in the jurisdiction of the PE and that of the head office leads to double deduction or deduction without inclusion.

The consequence of a double deduction situation is that a deduction for tax purposes may be denied in Denmark. Similarly, the consequence of a deduction without inclusion is that either the income in question is taxed in Denmark as the jurisdiction in which the payment is received or the deduction is denied in Demark as the jurisdiction from which the payment is made.

The Corporate Tax Act also contains anti-avoidance rules allowing for a reclassification for tax purposes of entities that would otherwise be considered transparent under Danish tax law. See VIII.D., below.

f. Payments to Related Parties in EU Blacklist Jurisdictions

By Act No. 788 of May 4, 2021, Denmark adopted certain defensive measures against countries and territories on the EU's blacklist of non-cooperating tax jurisdictions. The measures include the non-deductibility of payments to certain recipients in EU blacklist countries and territories, as described immediately below, and an increased withholding tax rate applicable to dividends distributed to recipients in those jurisdictions, as discussed in VI.C.2.c., below.

According to Section 5 H of the Danish Tax Assessment Act, individuals and corporations that are taxable in Denmark cannot deduct payments to related parties that are resident or registered in countries or territories on the blacklist, and such payments will be disregarded in all respects for purposes of calculating taxable income. The provision applies to related party recipients that are separate taxable entities as well as to transparent entities.

Even if the related party recipient is not resident or registered in a blacklist country or territory, deductions, etc. will be denied if the prima facie recipient is not the beneficial owner of the payment and the payment is passed on to a related party recipient in a blacklist country or territory. However, the provision does not apply if the beneficial owner of the payment is resident in an EU or European Economic Area (EEA) Member State or in a country with which Denmark has concluded a tax treaty.

The definition of payments covered by the provision is very broad and includes any consideration granted in connection with the acquisition of ownership of, or use of rights to, an asset, benefit or right, including consideration for loans, guarantees or credits.

The restriction on deductibility, etc. is effective for payments made on or after July 1, 2021.

The EU blacklist is amended from time to time. From July 1, 2024, the following jurisdictions are included on this blacklist: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, U.S. Virgin Islands, and Vanuatu.

5. Tax Credits

There are a number of ways for a Danish company to obtain relief from double taxation of foreign income.

a. Exempt Foreign-Source Income

No tax relief for foreign-source income is available by way of exemption, except for the exemption of foreign branch income and income from foreign real property (see V.B.3.d., above).

b. Foreign Tax Relief

Credit for foreign taxes may be claimed either under an applicable tax treaty or under domestic law. A corporation may choose whether to claim relief under a treaty or under the domestic legislation and may select the result that is most favorable to it.

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The domestic legislation provides for: (i) credits for foreign income taxes paid or withheld on all foreign-source income;[496] and (ii) credits for foreign tax on dividend income received by a Danish corporation from a foreign corporation.[497] Foreign taxes paid by a Danish corporation may be set off against Danish taxes.

The amount of the tax credit is the lower of either the amount of the foreign taxes paid or the amount of Danish taxes levied on the corresponding part of the corporation's net taxable foreign-source income, i.e., (foreign source gross income − related expenses) × applicable Danish tax rate, and is determined on a per-item basis. The taxable foreign-source income is to be calculated on a net basis in accordance with Danish rules, without regard to the actual tax treatment of the income by the foreign country.

If the country in which the foreign tax is paid has a tax treaty with Denmark that uses the exemption method for the avoidance of double taxation, the amount of Danish tax paid on the foreign-source income will be the amount of the tax relief, whether this amount is higher or lower than the foreign taxes paid.

A Danish corporation that receives a dividend from a foreign investment company[498] may claim a credit in accordance with domestic legislation. The credit is granted on application and cannot exceed the lower of the foreign tax or the Danish tax payable by the Danish corporation on the dividend.[499]

Expenses incurred in connection with foreign income, including dividends and interest, must be deducted from the foreign income before calculating the tax credit. If the expenses cannot be allocated solely to the foreign income, then an appropriate proportion is to be deducted.

Foreign taxes corresponding to Danish income tax are not deductible expenses. Other foreign taxes are generally deductible as business expenses. A separate provision in the Property Value Tax Act provides for a tax credit against Danish property taxes on foreign property with respect to foreign property taxes incurred on the same property.[500]

6. *Tax Rates and Calculation of Taxable Income*

The standard corporate income tax rate in Denmark is 22%.[501]

On June 9, 2022, the Danish government adopted legislation introducing a social contribution applicable to the financial services sector (*Samfundsbidrag fra den finansielle sektor*), effective as of January 1, 2023.[502] The rules impose a higher corporate tax for certain companies in the financial sector. The higher corporate tax will be implemented by means of multiplying the financial companies' taxable income under the general rules of the Corporate Tax Act by a factor of 25.2/22 for the income year 2023 (approximately 1.15) and by a factor of 26/22 for the income year 2024 and onwards (approximately 1.18). The factor increase will, therefore, have the same effect as a 3.2% increase in the corporate income tax rate for financial companies, i.e., from 22% to 25.2% in 2023, and a 4% increase to 26% in 2024 and onwards.[503]

Corporate income tax is paid on account based on 50% of the average income tax paid during the previous three years. The ordinary tax on account is paid in two equal installments, which are due on March 1 and November 1. The latest payment dates are March 20 and November 20.[504]

Companies that have been incorporated for two years or less may pay corporate income tax on account on November 20. Tax must be paid on account in the regular way from the third tax year.

A premium, which is set annually by the DTA, is granted to a company on any tax paid in addition to the amount paid on account by March 20, while a charge is imposed on voluntary payments made after March 20 but by November 20. An additional charge applies to voluntary payments made after November 20 but before February 1.[505] Any tax on dividends received is for this purpose treated as a voluntary payment made on November 20. The premium and charge amounts to 0.9% (2023). The 2024 figure is not yet available. Any taxes paid in excess of the final tax liability are repaid together with a premium of 3.6% (2023), whereas a penalty of 7.7% (2023) is imposed on the amount of tax underpaid (i.e., the amount by which the final tax liability exceeds the payments on account, the voluntary payments and tax withheld on dividends received) in a particular year.[506] If the reason for the underpaid tax is because the company did not inform the DTA of its taxable income in a timely fashion, interest will generally be payable from November 1 in the year following the tax year in question until the month the charge is levied.[507]

A Danish corporation does not pay local taxes or wealth taxes, but the municipality in which the corporation is registered receives 10% of the revenue collected from the corporate income tax.

The operation of these provisions may be illustrated as follows:

Tax on Account for 2023	**Ordinary**	**Voluntary**
March		
Payment on account March	365,200	980,000
Premium 0.9% on voluntary payment March	0	8,820

[496] TAA, Sec. 33.
[497] CTA, Sec. 17.2.
[498] TGLS, Sec. 19.
[499] CTA, Sec. 17.3.
[500] PVTA, Sec. 12.
[501] CTA, Sec. 17.
[502] Act No. 905 of June 21, 2022 (Bill L161), amending the Corporate Tax Act, the Tax Administration Act, the Tax Control Act and the Tax Assessment Act (society contribution from the financial sector and deduction ceiling on salaries).
[503] CTA, Sec. 17A.
[504] CTA, Sec. 29A.
[505] A taxpayer that makes a voluntary payment of tax during the year knows that it would otherwise have underpaid taxes for the year. The aim of the charges on voluntary payments made after March 20 is to compensate the tax authorities for the fact that the level of taxes was not appropriately estimated at the beginning of the year (if it had been, the tax authorities would have received the correct tax by the relevant deadlines). The charges are lower than the penalty for underpaid taxes as the taxes are paid during the year rather than on receipt of the annual tax statement in November following the relevant year.
[506] CTA, Sec. 30A.2.
[507] CTA, Sec. 30.1.

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November		
Payment on account November	365,200	25,000
Charge 0.9% on voluntary payment November	0	-225
Tax paid on account 2023	730,400	1,004,775
Total paid on account 2023		**1,735,175**
Actual taxes for 2023		
Taxable Income for 2023	3,000,000	
Income tax: 22 % (= 22% × 3,000,000)	660,000	-660,000
Too much tax paid on account:		1,075,175
Premium 3.6% × 1,075,175		3,706.3
Surplus tax including premium		1,113,881.3
Set off as ordinary payment on November 2024		-500,000
Repaid on November 20, 2024		**613,881.3**

A company incorporated before January 29, 1992, may pay income tax for a particular financial year on November 1 following the end of the financial year unless the company elects to pay income tax on account. A company incorporated before January 29, 1992, must pay corporate income tax on account if one of the following conditions is fulfilled:

(i) The company is an ApS that, at any time after January 1, 1997, has a share capital of less than DKK 200,000;

(ii) The company is a company that has taxable income in excess of DKK 10 million for each of the two years preceding the income year concerned;

(iii) The company's taxable income is assessed to be more than DKK 10 million;

(iv) The company is an entity that, not having been taxable, becomes taxable;

(v) The company is the receiving company in a merger, division or transfer of assets, where the transferring company paid corporate income taxes on account;

(vi) The company is a member of a jointly-taxed group and another company that is subject to the payment on account scheme becomes a member of the group (in this case, the entire group becomes subject to the scheme); and

(vii) The company is in arrears with the payment of corporate income taxes and the DTA determines that it should pay income tax on account.[508]

7. *Group Taxation*

Under Danish rules,[509] joint (consolidated) taxation is mandatory for a domestic group of companies and optional for an international group.[510] For accounting purposes, a parent company and its subsidiaries are required under the Accounts Act to file consolidated statements.

a. *Definitions*

A group of companies is defined in accordance with the Corporate Tax Act and IAS 27.[511] A parent company and its subsidiaries constitute a group of companies. A company over which a parent company exercises control is deemed to be a subsidiary for these purposes, as defined below.[512]

Section 31C of the Corporate Tax Act defines "control" as the power to govern the financial and operating policies of an enterprise.[513] A company is deemed to control another company if, directly, or indirectly through a subsidiary, it controls more than 50% of the votes of the other company, unless it can be demonstrated that the holding does not amount to control. If a company owns 60% of the shares of another company but only has 5% of the votes of that company, the relationship does not constitute a group of companies for joint taxation purposes. It is not required that the parent owns shares in the subsidiary to create a group of companies for tax purposes. The determining factor is the exercise of control.

Even though a parent does not control more than 50% of the votes in its subsidiary, the rules on joint taxation are triggered if the parent meets one of the following four tests:

(i) It controls the majority of the votes in the subsidiary under a shareholders' agreement;

(ii) It has the right to manage the financial and operating policies of the subsidiary under the by-laws or an agreement;

(iii) It has the right to appoint or remove the upper management body of the subsidiary and this body has the power to control the subsidiary; or

(iv) It can exercise control over a majority of the votes at a general meeting of the subsidiary and thus effectively control the subsidiary.

For purposes of determining whether control can be exercised, rights and options held by the parent and its subsidiaries have to be taken into account, whereas rights based on shares held by the subsidiary and its subsidiaries are disregarded.[514] Holdings of own shares by a subsidiary will decrease the number of votes necessary for the exercise of control.[515]

A company cannot be included in a jointly-taxed group if the company was acquired by a financial company for a limited period for purposes of winding up a loan previously made or for purposes of reconstructing the company. Any companies owned by the company acquired do not become a member of the jointly-taxed group.[516] The objective of this provision is to eliminate a double deduction for a financial company that takes over an insolvent debtor.

508 CTA, Sec. 30A.
509 CTA, Sec. 31.
510 CTA, Sec. 31A.
511 CTA, Sec. 31C.1.
512 CTA, Sec. 31C.4.
513 CTA, Sec. 31C.2.
514 CTA, Sec. 31C.5.
515 CTA, Sec. 31C.6.
516 CTA, Sec. 31C.7.

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Joint taxation is terminated from the beginning of the income year in which a group company is declared bankrupt.[517] For a detailed description of the rules concerning the termination of joint taxation, see i., below. Income of a foundation, trust or association that is considered a parent company under the tests set out above does not, however, form part of the consolidated income of the group. Only companies and associations subject to taxation under the Corporate Tax Act are to be included in a jointly-taxed group.[518]

Based on a recent ruling from the National Tax Board,[519] a manager of an Alternative Investment Fund (AIF) and the AIF will, as a starting point, not fulfill the requirements to be jointly taxed if the manager does not have control of the AIF, as defined in IAS 27, however the assessment remains specific for each case.

b. Domestic Groups

As noted above, joint taxation is mandatory for a group of Danish companies. Any company that, at any time during an income year, has been a member of the same group is subject to joint taxation. Danish companies controlled (as defined in a., above) by a foreign parent company and Danish branches of a foreign company are also subject to joint taxation.

The consolidated income comprises the total taxable income of each member of the group.[520] The taxable income of each member company is calculated in accordance with the ordinary provisions for the determination of the taxable income of a company, subject to the exceptions applying to a jointly-taxed group.

[517] CTA, Sec. 31C.8.
[518] CTA, Sec. 31.1.
[519] SKM2023.105.SR.
[520] CTA, Sec. 31.2.

The joint taxable income is calculated after the taxable income of each company has been reduced by tax losses that it may carry forward. If the total consolidated income is positive, the taxable profit is divided proportionally between the jointly-taxed companies. If the total consolidated income is negative, the loss is divided proportionally between the loss-making companies and is carried forward by the loss-making companies to the following income years. A loss can only be set off against the income of another group company if the loss was incurred in an income year in which the companies were jointly taxed and the joint taxation was not subsequently terminated. A loss incurred in an earlier income year must be set off before losses suffered in later years. A loss incurred by a company prior to its becoming a member of a jointly taxed group may only be set off against profits of that company.

The application of these provisions is illustrated below.

Example: Parent company A controls subsidiary B, which in turn controls subsidiary C. On July 1, 2022, A acquires subsidiary D. All companies are Danish and wholly owned by A. The loss carried forward from 2021 and the income generated in 2022 are as follows:

Company	Losses Carried Forward in 2021	Income in 2022
A	−100	200
B	0	−50
C	−50	150
D	0	(1/1–6/30)−300
		(7/1–12/31) 200

The losses may be applied as follows:

Company	Income Subject to Joint Taxation 2022	Losses Carried Forward	Income	Loss Allocation in 2022	Income	Prior Year Losses	Income	Losses Carried Forward End of 2022
A	200	−100	100	−25	75	0	75	0
B	−50	0	−50	50	0	0	0	0
C	150	−50	100	−25	75	0	75	0
D	200	−200	0	0	0	0	0	−100

As the loss carried forward by D relates to the period before July 1, 2020, these losses can only be offset against future income realized by D and not against income of the other companies in the jointly-taxed group (for further details, see e. below).

The provision[521] limiting the amount of losses that may be carried forward (see 4.d., above) also applies to a consolidated group.[522] Under this rule, losses up to an amount of DKK 9,457,500 (2024) may be deducted in full. Only 60% of losses in excess of that amount may be deducted and the balance is carried forward. The limitation is divided proportionately among the consolidated companies.

[521] CTA, Sec. 12.2.

[522] CTA, Sec. 31.3.

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The receiving company in a tax-free reorganization under the Act on Tax-Free Mergers[523] cannot set off losses of other consolidated companies if the losses are incurred prior to the reorganization. This limitation does not apply if the transferring company taking part in the reorganization was part of the consolidated group in the years when the losses were suffered and the transferring company did not directly or indirectly participate in a reorganization with a company that was not a member of the consolidated group.[524]

If a company becomes a member of a group during an income year, the income for the part of the year in which the company is a group member must be included in the consolidated income.[525] Taxable depreciation can be claimed only proportionately for the period in which the company is a member of the group. At the time a company becomes a member of or leaves a consolidated group, a tax return must be prepared for the period from the beginning of the income year until the date of the company's joining or leaving the group. The taxable value and accruals principles applied in this tax return must also be applied in the tax return for the remainder of the income year. The provisions outlined in this paragraph apply even if the company concerned in relation to the establishment or termination of the joint taxation is part of a reorganization the effective date of which is prior to the establishment or after the termination of the joint taxation.

When domestic joint taxation is triggered, the top parent company must be appointed the administration company for purposes of joint taxation.[526] If the group does not have a Danish top parent company but comprises Danish sister companies, then one of the sister companies must be so appointed. If the appointed company ceases to be a member of the group or another company becomes the top parent company, then a new top parent company must be appointed. The rights and obligations of the prior top company are assigned to the new top company. The old top company must pay an amount to the new top parent company equal to the net liabilities assigned. The making of this payment is not a taxable event.

The administration company is responsible for the payment of the total income tax of the group. This includes any additional payment, charges and interest. Conversely, payment of any surplus taxes to the administration company discharges the DTA from any further liability to the group. The ultimate parent company (or if none exists, the administration company) and each group member in which all shares are directly or indirectly owned by the ultimate parent company at the end of an income year are jointly and severally liable for corporate income taxes, charges and interest. Companies within the group that are majority owned by the ultimate parent (directly or indirectly) and have minority owners outside the group are also jointly and severally liable for taxes, charges and interest, subject to some exceptions.[527]

If a tax loss is utilized by one of the other companies in the group or a PE in Denmark that is a member of the group, the administration company must refund the loss-making company an amount equivalent to 22% (the 2024 corporate tax rate) of the loss deducted,[528] at the latest on the date the corporate tax is due for payment. The amount refunded cannot be deducted for tax purposes and is not taxable in the hands of the receiving company. The company using the losses must refund to the administration company an equivalent amount.

Group companies may elect not to utilize tax losses if the income of a PE or a subsidiary that is a member of the group is taxed abroad. The election is conditioned on the income being taxed abroad and the foreign country granting relief for Danish taxes using the credit method. The election applies with respect to all tax losses, so that, when an election is made, it is not possible for the group companies to use part of the tax losses.[529] Losses unutilized because of the making of such an election may be carried forward indefinitely subject to the limitation provision set out in Section 12, CTA.

The Tax Board (*Skatterådet*) may[530] issue regulations concerning the consequences of joining or leaving a jointly-taxed group.

Regulation No. 1299 of November 9, 2018, contains detailed reporting requirements relating to joint taxation.

c. *International Groups*

The ultimate parent company of a corporate group may elect to apply consolidated tax treatment[531] to encompass not only its Danish companies, but also all the foreign companies that are members of the group.

It should be noted that the definition of a "group" is very broad. The definition of control set forth in Section 31C of the Corporate Tax Act is decisive in analyzing whether a group of companies exists. For purposes of the international joint taxation election, not only companies controlled by the Danish group companies, but also companies holding shares in the Danish group, are considered to be members of the same group. For instance, under the law, where a U.S. parent company has a Danish subsidiary that, in turn, controls other foreign companies, all these companies would be considered members of the same group.

The jointly-taxed income encompasses the income of all members of the group, including all foreign PEs, as well as income from foreign real property.[532] However, not all kinds of foreign entities may be included in a jointly-taxed group. For foreign companies to be included, it is required that none of the members of the companies be personally liable for the debts of the companies and that profits be distributed in proportion to the various members' holdings in the companies.[533] It is not possible to include one or more, but not all, of the relevant foreign companies in a jointly-taxed group; i.e., all controlled companies must be included if an election is made. As noted above, group taxation will also encompass foreign PEs and real property located abroad. Real property and associated businesses as defined in the Hydrocarbon Tax Act are deemed to

[523] Consolidated Act No. 743 of April 23, 2021, the Act on Tax-Free Mergers (*Fusionsskatteloven* or TFM), as amended.
[524] CTA, Sec. 31.4.
[525] CTA, Sec. 31.5.
[526] CTA, Sec. 31.6.
[527] CTA, Sec. 31.6.
[528] CTA, Sec. 31.8.
[529] CTA, Sec. 31.9.
[530] CTA, Sec. 31B.
[531] CTA, Sec. 31A.1.
[532] CTA, Sec. 31.1.
[533] CTA, Sec. 31A.1.

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be PEs for purposes of the provisions concerning international joint taxation.

The provisions described in b., above concerning domestic joint taxation apply to international joint taxation, unless otherwise provided, as described below.[534]

Tax losses incurred by foreign companies or PEs prior to a joint taxation election becoming effective cannot be deducted from the jointly-taxed income. Expenses incurred by foreign companies prior to the making of the election may only be deducted to the extent such expenses would have been deductible had the foreign company been subject to limited taxation in Denmark under Section 2 of the Corporate Tax Act, and if they would have been so deductible, only with respect to expenses directly related to the activities in Denmark.

If joint taxation is later terminated, tax losses incurred by foreign companies or PEs within the group cannot be carried forward.

The jointly-taxable income may be reduced by contributions made to other members of the group if the contributions are deductible under foreign law and are included in calculating the Danish taxable income of the companies that are jointly taxed with the foreign company making the contributions.[535]

The election for joint international taxation must be made, at the latest, in conjunction with the filing of the tax return for the income year for which joint taxation is elected.[536] International joint taxation is considered waived if the election is not submitted or the tax return is not filed on time.

The election is binding for a period of 10 years for the parent company. After the expiry of the 10-year period, the election may be renewed for another 10-year period. The ultimate parent remains bound by the election irrespective of any sales or acquisitions of subsidiaries. The ultimate parent may elect to terminate the joint taxation prior to the end of the 10-year period but, if such an election is made, special recapture provisions are triggered (for further details, see j., below). Notification of termination must be submitted when the tax return is filed for the income year at the end of which termination will take place.

The making of an election for joint taxation by the shareholders of an ultimate parent puts severe restraints on their ownership, as a sale of an underlying company may give rise to complicated tax consequences. If the ultimate parent is acquired by another company that then becomes the ultimate parent of the group, the joint taxation is deemed to be terminated and triggers recapture provisions. This may be avoided if the new ultimate parent elects for joint taxation for a new period of 10 years. If the same group of shareholders retains control of more than 50% of the votes in the parent company acquired, the 10-year period for the parent company that last made the election will apply. This provision does not apply when the new ultimate parent is a newly-formed company. In such cases, the 10-year period elected by the acquired parent will apply.

This can be illustrated by the following example: a Danish international joint taxation group — Group C — consists of a foreign ultimate parent company C and Danish subsidiaries D and E. Group C is acquired by a foreign company B, which is a subsidiary of the Danish ultimate parent company A, which has also elected Danish international joint taxation (Group A). In this scenario, no recapture taxation of company C will be triggered as the international joint taxation of Group C should not be deemed to have been terminated as Group C will enter into Group A's 10-year binding period.

International joint taxation is also deemed to be terminated if the ultimate parent is divided into two companies by way of a demerger (no exemptions apply). Further, international joint taxation is deemed to be terminated if the ultimate parent company participates in a merger, unless international joint taxation is elected by the surviving company in the merger. In a merger between two ultimate parents of different groups of companies, international joint taxation will be deemed to have been elected (so that recapture taxation will not be triggered) if the group having the largest consolidated equity has elected international joint taxation. In this case, the 10-year period of the ultimate parent in that group will apply.

If international joint taxation is elected, the ultimate parent must act as the administration company.[537] If the ultimate parent company is a foreign company that is not taxable in Denmark or does not participate in the joint taxation (for example, if the foreign ultimate parent company is an entity type in which one of the members is personally liable for the debts of that company), the ultimate Danish parent must be appointed by the administration company or, if there is no such parent, one of the top sister companies.

This can be illustrated by the following example: international joint taxation is elected by a group consisting of the ultimate parent company A and two subsidiaries B and C (Group A). If the group is acquired by another group (Group B) that has opted to apply the international joint taxation scheme, company A will cease to be the administration company as the ultimate parent company in Group B is the administration company of the international joint taxation comprising Group B and the old Group A.

The administration company and the ultimate parent are jointly liable for the income taxes, interest and charges payable, and for any recapture of losses previously deducted even though the ultimate parent may not be a Danish company. The liability, however, does not encompass income tax on income that would have been taxed under the rules on domestic joint taxation had international joint taxation not been elected. The income tax deferred by the utilization of foreign losses must be accounted for in a special deferred tax liability account in the annual accounts of the administration company. If the administration company ceases to be taxable in Denmark, it become liable for all taxes deferred, unless a new administration company is appointed.[538]

d. Dividends

Dividends received from a Danish jointly-taxed subsidiary or from a foreign company that is eligible to become jointly-taxed with the Danish subsidiary are exempt.[539] The exemption provision does not apply if the dividend-paying company can

[534] CTA, Sec. 31A.1.
[535] CTA, Sec. 31A.2.
[536] CTA, Sec. 31A.3.
[537] CTA, Sec. 31A.4.
[538] CTA, Sec. 31A.5.
[539] CTA, Sec. 13.1.2.

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deduct the dividends for income tax purposes. Dividends received from a subsidiary that is not jointly taxed are also generally exempt. For further details, see VI.B.2., below.

e. Allocation of Tax Losses

Domestic joint-taxable income is computed by applying the ordinary rules of any applicable tax law.[540] The taxable income is computed for each company and then reduced by any available tax losses.

Tax losses sustained prior to the year in which joint taxation is established may only be set off against the income of the company that suffered the loss. The oldest tax losses must be utilized first. Tax losses generated by one company may only be set off against the income of other companies if the loss is suffered in an income year for which the companies are jointly-taxed and the joint taxation has not subsequently been terminated.

If the joint taxation is terminated during an income year, losses sustained after the termination cannot be set off against prior profits even though the loss and the profit are realized within the same income year. On the other hand, if company A acquires company B on July 1, losses suffered by B from July 1 to the end of the income year may be utilized by company A.

In the case of international joint taxation, tax losses incurred by foreign companies or PEs prior to the joint taxation election cannot be deducted from the jointly-taxed income. Expenses incurred by foreign companies prior to the joint taxation election may only be deducted to the extent such expenses would have been deductible had the foreign company been subject to limited taxation in Denmark under Section 2 of the Corporate Tax Act. If the expenses would have been so deductible, only expenses directly related to the activities in Denmark may be deducted.[541]

If a tax loss suffered by a foreign company or PE abroad is utilized by one of the other companies in the group or a PE, the company utilizing the loss must pay an amount equivalent to the tax value of the loss to the administration company.

If Danish corporate tax is paid by the administration company on a foreign group company's income, the foreign group company may undertake to refund the income tax paid to the administration company.[542]

f. Debt-to-Equity Considerations

The ordinary debt-to-equity provisions apply in the case of group taxation, as well as the rules limiting the deduction of interest expenses. These rules generally apply on a group consolidated basis and are described at V.B.4.a.(3), above.

g. Depreciation Rules

Depreciation within a domestic jointly-taxed group is taken by applying the ordinary rules and principles for depreciation (see V.B.4.a.(5), above). The tax base for depreciation purposes of a domestic company's assets is not affected by the company joining or leaving a tax group.

When a foreign company becomes a member of a jointly-taxed group under the rules on international joint taxation, its assets and liabilities are deemed to be acquired when originally purchased but at their market value at the beginning of the income year in which joint taxation is established.[543] If the taxpayer has reduced the acquisition price of foreign real property by any capital gains realized on real property located in Denmark prior to the time international joint taxation is elected, the acquisition price for Danish tax purposes will be the market value reduced by the capital gains transferred. (For further details, see V.B.3.b.(2), above.)

The value of goodwill, patents and trademarks developed by a company itself is deemed to be zero for tax purposes. Any capital gains realized on goodwill and other IP rights are computed as the difference between the sale price and the market value at the time joint taxation is elected.[544]

Depreciable assets are deemed to be acquired at their market value on the date joint taxation is established.[545] If the assets are acquired from a group company (i.e., the same group of shareholders controls 50% or more of the shares or votes in both the transferring and the recipient company, where the transfer did not trigger any Danish or foreign taxation or the foreign taxation was deferred), the company becoming a member of the jointly-taxed group will succeed to the tax position of the company transferring the assets. The taxable basis for depreciation purposes is the actual acquisition cost less the maximum depreciation that could have been claimed under Danish tax provisions up to the beginning of joint taxation. However, the market value of the assets is taken as the basis if this is lower than the figure calculated by applying the maximum allowable depreciation under the rules in force at the time the joint taxation is established.[546]

With regard to the calculation of any depreciation recapture, taxation is only imposed if the total of the depreciation claimed during the period of joint taxation exceeds the actual loss at the time of disposal. For these purposes, the actual loss is computed as the difference between the sale price and the actual value of the assets at the time the joint taxation was established.[547]

Taxable capital gains, if any, cannot exceed an amount equivalent to the difference between the actual sale price and the market value at the time the joint taxation was established. For assets depreciated using the declining balance method, the basis for taxation is the depreciated value at the time of disposal, increased by depreciation recaptured and any profits.

h. Allocation of Net Tax Payable

Under domestic joint taxation, the administration company is liable for the payment of corporate income taxes. The other members of the group must pay to the administration company the tax levied on their income.

If international joint taxation is elected, the ultimate parent and the administration company are jointly liable for payment of the tax of the group. Each member of the group must pay to

[540] CTA, Sec. 31.2.
[541] CTA, Sec. 31A.2.
[542] CTA, Sec. 31A.6.
[543] CTA, Sec. 31A.7.
[544] CTA, Sec. 31A.7.
[545] CTA, Sec. 31A.8.
[546] CTA, Sec. 31A.8.
[547] CTA, Sec. 31A.9.

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the administration company its share of the tax payable by the group.

i. Termination of Joint Taxation

Joint taxation of a company is terminated at the time the company in question ceases to be a member of the relevant group (as defined above).

A tax return must be prepared for the period from the beginning of the income year in which the termination takes place through the date of termination. Taxable deprecation can only be claimed for the proportionate part of the income year. Income must be determined applying the ordinary rules. Any elections the taxpayer has made (for example, concerning depreciation) for the interim period also apply for the remaining part of the income year. These provisions apply irrespective of whether the company leaving the group participates in a restructuring that becomes effective for tax purposes before the termination of the joint taxation.

Special recapture provisions apply if international joint taxation is terminated.[548] If joint taxation is not elected at the time the binding period of 10 years expires or a subsidiary is sold, limited recapture provisions apply. The rules concerning full recapture apply if joint taxation is terminated before the end of a binding period of 10 years. This may be the case if, when filing its tax return, the ultimate parent company notifies the DTA that the joint taxation is terminated or if the group is acquired by another group and becomes a member of that second group. However, no recapture takes place if the acquired group is jointly taxed with the acquiring group for the remainder of the 10-year term applying to that group.

The limited recapture provisions are triggered if a foreign subsidiary is sold. In such a case, the income of the administration company is increased by an amount equivalent to the gain the foreign company or PE would have realized on the sale of its business assets and liabilities at market value. The income cannot be increased by an amount exceeding the balance of the recapture account multiplied by the corporate tax rate for the applicable income year.[549]

The recapture account is computed on a per country basis. The balance of the recapture account is equivalent to the total tax value of the losses the foreign company or PE has had in the particular country that have been deducted from the income of other companies or PEs in the group and that have not been recovered from profits of subsequent years, less any tax credit or the tax value of a possible recapture. The balance of the recapture account cannot be reduced to the extent the income of a foreign subsidiary is interest from, or gains on, a loan made to the parent or companies with which the parent is jointly taxed. For purposes of calculating the recapture account, the tax rate for the income year in which the loss has been deducted or subsequently recovered is applied.

The following example illustrates the application of these rules.

Example: The income of three foreign companies is as follows:

[548] CTA, Sec. 31A.10.

[549] CTA, Sec. 31A.10.

	2019	2019	2020	2020	2021	2021
	Income	**Consolidated**	**Income**	**Consolidated**	**Income**	**Consolidated**
Company I	−300	−400	−50	350	250	550
Company II	100		300		200	
Company III	−200		100		100	

For purposes of the calculation, it is assumed that the tax rate of the foreign country is 22%, that losses may be carried forward so that Company III does not incur any taxes payable in 2020 and 2021 under the tax rules of its country of residence, and Company I does not incur any taxes payable in 2021 under the tax rules of its country of residence.

In 2019, a tax loss of 400 may be used by other companies in the group and the recapture account is thus 88 (400 × 0.22).

For 2020, the income of 350 must be included in the joint income of the group in Denmark. The Danish taxable value thereof is 77 (350 × 0.22). The foreign tax is 66 (300 × 0.22), for which a credit of 66 is granted when calculating the Danish income tax. The recapture account is thus reduced by 11 (from 88 at the end of 2019 to 77 at the end of 2020), corresponding to the Danish corporate income tax after credit.

For 2021, the income of 550 must be included in Denmark. The Danish taxable value of the income is 121. The foreign tax is 44 (200 × 0.22), for which a credit of 44 is granted when calculating the Danish income tax. The Danish corporate income tax after credit is 77, reducing the recapture account from 77 at the end of 2020 to 0 at the end of 2021.

Full recapture will be triggered if the joint taxation is terminated during a binding 10-year period.[550] In this case, the income of the administration company in the year the joint taxation is terminated is increased by an amount equivalent to all the recapture accounts times the applicable tax rate, plus all recapture accounts under Section 33D of the Tax Assessment

[550] CTA, Sec. 31A.11.

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Act. The recapture under Section 33D applies if Denmark applies the exemption method under an applicable double taxation agreement to grant relief with respect to income generated by a PE or real property owned by a Danish company in a foreign country.

A Danish company that has claimed a deduction for losses generated by a PE or foreign real property is required in subsequent tax years in which the PE or real property generates profit to recognize that profit for tax purposes. The amount of profit to be included in Danish taxable income is an amount equal to the losses previously deducted. The recapture provision also applies if the PE or parts of it are sold or incorporated. However, in this case, the amount to be recognized as income is limited to the profit or capital gain to be included in the year the PE is sold or incorporated.

If relief is granted using the credit method, there will be no recapture if the foreign PE (or real property) is incorporated.

To prevent a group incorporating a PE once it becomes profitable, tax losses generated by a PE in a foreign country that have been deducted for Danish tax purposes and have not subsequently been recovered are included in Danish taxable income if the foreign PE is sold to a group company by the Danish company that established the foreign PE.[551] This provision applies irrespective of the method applied for relieving double taxation. If the loss has not subsequently been recovered, the amount to be recognized as income is limited to the profits or capital gains that are to be included in the year of sale or incorporation of the PE.

A special loss recovery provision applies where the former owner, alone or together with group companies, obtains control over the PE within five years after the sale. This limitation provision also applies to real property. Any losses previously deducted and not recovered under the provision described above are then taxable.[552]

j. Other Limitations

Foreign subsidiaries may not deduct interest and royalty payments if the income flowing from the payment would have been subject to limited taxation in Denmark had the payment been made from Danish sources.[553] Nor may foreign subsidiaries deduct "internal fees." A payment is considered an internal fee if the recipient of the fee and the foreign subsidiary under foreign law are treated as transparent entities of the same legal person so that the fee is treated for tax purposes in the particular country as an internal fee that does not form part of taxable income. This limitation provision only applies if the foreign country concerned is an EU Member State or an EEA country, or a country with which Denmark has concluded a tax treaty. Furthermore, if the income is taxed in Denmark, an EU Member State or an EEA country, or a country with which Denmark has concluded a tax treaty, the limitation does not apply.

[551] TAA, Sec. 33D.5.
[552] TAA, Sec. 33D.6.
[553] CTA, Sec. 31A.13.

8. Assessment and Filing

Tax returns must be filed by all Danish corporations and other entities subject to Danish corporate income tax no later than six months from the end of the accounting year.[554] The latest filing date is September 1 if the year-end is between January 1 and March 31.

All filing is done electronically. A fine of DKK 200 per day may be imposed for late filling. However, no more than DKK 5,000 in total.[555]

Assessments are handled by DTA based on the information in the tax returns filed by corporations.[556]

If the authorities question a return, the taxpayer is entitled to submit its arguments in writing or to negotiate with the DTA. The DTA must give reasons for any changes to any amounts furnished by the taxpayer following such negotiations and must notify the taxpayer of its right to appeal.

If the taxpayer does not file a tax return or if the tax return is filed but does not provide sufficient information, the authorities will make an estimated assessment. An assessment made by the DTA may be challenged before the National Tax Tribunal.[557]

Although, in general, all individuals and legal persons, must file a tax return,[558] certain exceptions apply with respect to minors, recipients of dividends and royalties subject to final taxation, certain associations, researchers subject to taxation under Section 48E of the Tax at Source Act and the estate of a decedent.[559]

9. Audits and Limitations Period for Assessment and Collection

The bookkeeping, which forms the basis for preparing the tax return, must be done in accordance with the Bookkeeping Act and/or the Act on Annual Accounts.[560]

Section 26 of the Tax Administration Act contains detailed rules concerning the audit process.

A notice from DTA concerning a change of an assessment must be sent at the latest by May 1 of the fourth year after the end of the income year concerned. The change must be made at the latest by August 1 of the fourth year after the end of the income year. This limit does not apply to the calculation of the tax based on the new assessment. A reasonable request from the taxpayer for an extension for making the assessment may be granted.

A taxpayer wishing to make a request for a change of an assessment must file the request at the latest by May 1 of the fourth income year after the end of the income year concerned. The taxpayer must submit information of a factual or legal nature justifying the change.

A change in the basis for depreciation for tax purposes may be made irrespective of the time limits referred to above unless the change is based on an estimate.

[554] TCA, Sec. 12.
[555] TCA, Sec. 5.
[556] TCA, Sec. 5.
[557] TA, Sec. 35a.
[558] TCA, Sec. 2.
[559] TCA, Secs. 3 and 4.
[560] TCA, Sec. 6.

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A change cannot be made if the reason for the changed assessment is a change in the amount of a tax loss that was included in a tax return for an income year which is outside the scope of the time limits described.

The statute of limitations expires in the sixth income year in the case of controlled transactions (transfer pricing) or shipping income taxation. If the income year used by the taxpayer is not the calendar year, the statute of limitations is calculated from the end of the taxpayer's income year. In the case of a tax-free reorganization, the statute of limitations expires in the sixth income year after the year in which the reorganization takes place.

Section 26 of the Tax Administration Act does not apply to gift tax. In the area of gift tax, the DTA may alter the value of a gift if it is deemed not to represent the fair market value. The deadline is six months after the DTA's receipt of notification of the gift, provided the DTA has all the information necessary to make the assessment at that point. If that is not the case, the deadline is suspended until the DTA receives such information. The statute of limitations for the collection of taxes assessed and calculated is three years after the date the taxes were due for payment.

In special circumstances, the statute of limitations is 10 years. This is the case if the taxpayer has acknowledged in writing the amount of tax owed, or the amount is owed according to a judgment issued by a court.

10. Mergers and Acquisitions

a. In General

The Danish rules on cross-border reorganizations are governed by Council Directive 90/434/EEC of July 23, 1990, on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States. This Directive, originally implemented into Danish law in 1992, was subsequently amended by Council Directive 2005/19/EC of February 17, 2005, Council Directive 2006/98/EC of November 20, 2006, which was codified in a single text by Council Directive 2009/133/EC of October 19, 2009 (the "Merger Tax Directive"), which was subsequently amended by Council Directive (EU) 2015/121 of January 27, 2015, introducing GAAR provisions. For further information on the Merger Tax Directive, see also 7450 T.M., *Business Operations in the European Union — Taxation*, section III. Merger Tax Directive.

The relevant Danish provisions concerning tax-free mergers, divisions and transfers of assets are found in the Act on Tax-Free Mergers[561] and the provisions concerning exchanges of shares are laid down in Section 36 of the Act on Taxation of Gains and Losses on Shares.[562]

b. Tax-Free Mergers

(1) Domestic Mergers

Article 2a of the Merger Tax Directive contains the following definition of a merger:

> (i) One or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company in exchange for the issue to their shareholders of securities representing the capital of that other company, and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities;
>
> (ii) Two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, in exchange for the issue to their shareholders of securities representing the capital of that new company, and, if applicable, a cash payment not exceeding 10% of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities; or
>
> (iii) A company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities representing its capital.[563]

The 10% requirement stipulated by the Merger Tax Directive does not apply under Danish law.[564] For the rules on tax-free mergers to apply, the consideration may consist only of shares in the transferring company and cash. Consideration other than shares or cash will generally be subject to taxation as dividends.

Permission from the DTA is at the outset not required to carry out a tax-free merger. Consequently, the DTA will not approve a merger in advance, but confirmation that a merger is tax-free may be sought by means of a binding tax ruling. Only in the case of a cross-border merger where a Danish resident company ceases to exist and the Danish discontinuing company is directly or indirectly controlled by an individual or entity resident in a non-EU/EEA jurisdiction that has not concluded a tax treaty with Denmark is the permission of the DTA required.[565]

No documents have to be filed with the DTA, except in the case of a merger between banks or other financial institutions, but the DTA must be notified of a tax-free merger no later than one month after it is implemented.

For assessment purposes, the DTA electronically retrieves the corporate documents, which are to be filed with the Danish Business Authority. See III.B.3, above.

It is a condition for a tax-free merger that the merger date is the same as the date on which the annual accounts of the receiving company begin.[566]

The taxable income for the last income year of the transferring company is computed for the period from the end of the last ordinary income year to the merger date, irrespective of the

[561] Consolidated Act No. 743 of April 23, 2021, the Act on Tax-Free Mergers (*Fusionsskatteloven* or TFM), as amended.

[562] Consolidated Act No. 172 of January 29, 2021, the Act on Taxation of Gains and Losses on Shares (*Aktieavancebeskatningsloven* or TGLA), as amended.

[563] TFM, Sec. 1.3.

[564] TFM, Sec. 2.1.

[565] TFM, Sec. 15.4.

[566] TFM, Sec. 5.

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length of that period. The transferring company must file a tax return for that period.[567] Special rules apply with respect to the effective date of a merger for tax purposes if, either prior to or in connection with the merger, a company enters or exits a joint taxation group. See V.B.7., above.

(a) Succession Principle

The Act on Tax-Free Mergers is based on the succession principle. Assets and liabilities of the transferring company are deemed to be acquired by the receiving company at the same time and for the same consideration as they were acquired by the transferring company. If the transferring company has depreciated assets for tax purposes, the depreciation concerned is deemed to have been taken by the receiving company.[568] The same principle applies even with regard to assets with respect to which, for tax purposes, the transferring company was a trader or speculator.

If shares owned by the transferring company were acquired by the receiving company as a result of a merger and subsequently sold at a loss, any dividends distributed to the transferring company prior to the merger are deemed to be received by the receiving company and are thus set off against any capital losses on those shares, thus reducing the deductible amount of those capital losses. This rule also applies if the subsidiary is liquidated and a loss is recognized.[569]

A merger has no impact on the taxable basis of the assets of the receiving company, provided the assets acquired as a result of the merger are accounted for separately in the accounts and tax return of the receiving company.[570]

Tax losses incurred prior to a merger by either the transferring or the receiving company cannot generally be carried forward after the merger by the receiving company. However, if the companies were jointly taxed prior to the merger, losses incurred while they were jointly taxed may be carried forward by the receiving company after the merger.[571]

A special limitation applies with respect to losses incurred by either the transferring or the receiving company during the period from the merger date until the date the merger is approved by the shareholders in all participating companies. The taxable income of the receiving company for this period cannot be reduced to an amount lower than its positive net capital income, increased by any income from the hiring of depreciable assets and vessels. The tax loss is computed before depreciation. Further, a tax loss for the same period incurred by one of the participating companies cannot be utilized if one of the participating companies operated during that period with no commercial risk.[572]

Tax losses on shares, warrants and options concerning shares, and losses on real property in either company may not be carried forward.[573]

[567] TFM, Sec. 7.
[568] TFM, Sec. 8.
[569] TFM, Sec. 8.4 and TGLS, Sec. 17.2.
[570] TFM, Sec. 8.5.
[571] TFM, Sec. 8.6.
[572] TFM, Sec. 8.7.
[573] TFM, Sec. 8.8.

(b) Disposal of Shares in Transferring Company

Shares in the transferring company are deemed to have been disposed of to the extent consideration other than shares in the receiving company is received by the shareholders of the transferring company. The disposal is deemed to have been made at the merger date and at the value of the shares at that date.[574]

The gains or losses arising on this disposal are treated for tax purposes in the ordinary way in accordance with the provisions of the Act on Taxation of Gains and Losses on Shares. Gains realized by the receiving company on shares in the transferring company that are owned by the receiving company at the time of the merger are not taxable if the receiving company owns 10% or more of the shares in the transferring company.[575]

(c) Shares in Receiving Company

The succession principle also applies with respect to shares in the receiving company issued to the shareholders of the transferring company.[576] Such shares are deemed for tax purposes to have been acquired at the same time and for the same price as were the shareholders' shares in the transferring company.

If the shares in the transferring company were acquired by the shareholders at different times or have a special tax status, the shares in the receiving company issued to those shareholders are deemed, respectively, to have been acquired at those different times or to have the relevant special tax status.[577]

(2) Mergers with Foreign Companies

Under the Act on Tax-Free Mergers, it is possible to effect a tax-free merger between a Danish company and a foreign company.[578]

If, in a merger between a Danish company and a foreign company, it is the foreign company that is dissolved, it is a condition for tax-free treatment that the foreign company must be a company from a Member State within the meaning of Article 3 of the Merger Tax Directive. Under Article 3, a "company from a Member State" means any company that:

(i) Takes one of the forms listed in the Annex to the Directive;

(ii) Under the tax laws of an EU Member State, is considered to be resident in that State for tax purposes and, under the terms of a double taxation agreement concluded by that State with a third state, is not considered to be resident for tax purposes outside the European Union; and

(iii) Is subject to one of the taxes referred to in Article 3, without the possibility of opting not to be subject to or of being exempted from such taxation.

It is not necessary to obtain permission from the DTA to carry out a tax-free cross-border merger when a Danish company is the receiving company in the merger, and it is no longer

[574] TFM, Sec. 9.
[575] TFM, Sec. 10.
[576] TFM, Sec. 11.1.
[577] TFM, Sec. 11.2.
[578] TFM, Sec. 15.

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necessary to file with the DTA any documents other than those required under the relevant foreign law, but the DTA must be notified of the tax-free merger no later than one month after its implementation.[579]

If an application for permission is filed with the DTA, one of the conditions for approval is that one of the main objects of the transaction should not be tax evasion or avoidance. The Danish authorities adhere to the principle laid down by the Court of Justice of the European Union (CJEU) in *A. Leur-Bloem v. Inspecteur der Belastingdienst*.[580] According to the CJEU, it follows "from Article 2(d) and (h) and from Article 11(1)(a) of the Merger Tax Directive that the Member States must grant the tax advantages provided for by the Directive in respect of the exchanges of shares referred to in Article 2(d) unless those operations have as their principal objective or as one of their principal objectives tax evasion or tax avoidance. In this regard, the Member States may stipulate that the fact that those operations were not carried out for valid commercial reasons constitutes a presumption of tax evasion or tax avoidance." The court further stated, "It is clear from the wording and aims of Article 11, as it is from those of the Directive, that 'valid commercial reasons' is a concept involving more than the attainment of a purely fiscal advantage. A merger by way of exchange of shares having only such an aim cannot therefore constitute a valid commercial reason within the meaning of that article."

When reviewing an application, the DTA will require the taxpayer to submit a reasoned explanation of the commercial background for the transaction. The fact that tax savings play a significant role is not sufficient ground for refusing an otherwise commercially justified transaction.

If it is the foreign company that is dissolved on the merger, the succession principle described in V.B.10.b.(1)(a), above, applies[581] with regard to the assets and liabilities that are transferred to the Danish company as a result of the merger. The succession principle, however, only applies with regard to assets and liabilities that formed part of a PE of the foreign company in Denmark or if the foreign company was a subsidiary of the Danish company and was jointly taxed with the Danish company prior to the merger.

If the assets and liabilities transferred were not subject to Danish corporate income taxation prior to the merger, the succession principle does not apply and the assets and liabilities are deemed to be acquired at their market value.[582] Assets that are depreciable for Danish tax purposes are deemed to have been acquired on the date of their original acquisition and depreciated in accordance with the Danish rules from that date. The taxable basis of these assets is then their written-down value as of the date of the merger.

A merger of two foreign companies may also be carried out as a tax-free merger in Denmark with regard to assets transferred from a Danish PE of the transferring company to a Danish PE of the receiving company.[583]

If the company that is dissolved is a Danish company, the Act on Tax-Free Mergers only applies with respect to such of its assets and liabilities as are transferred to a PE that the receiving foreign company has in Denmark.[584] Assets of the Danish company that are transferred abroad as a result of the merger are deemed to have been disposed of — the deemed disposal giving rise to the taxation of any recaptured depreciation and of any capital gains. Further, the permission of the DTA is required if the discontinuing Danish company is directly or indirectly controlled by an individual or entity resident in a non-EU/EEA jurisdiction that has not concluded a tax treaty with Denmark.

(3) Divisions

Transfers of assets may be effected tax-free applying the rules on tax-free divisions.[585]

A "division" is defined as an operation in which a company, on being dissolved without going into liquidation, transfers all of its assets and liabilities to two or more existing or new companies, in exchange for the pro rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash payment.

It is a condition that the transferring and the receiving companies are companies within the meaning of Article 3 of the Merger Tax Directive and that none of the companies are transparent for Danish tax purposes. It is a further condition for a tax-free division that the division date is the same as the date on which the annual accounts of the receiving companies begin and that the shareholders in the transferring company receive consideration in proportion to their respective shareholdings.

Shares received by a corporate taxpayer in the receiving company are, for capital gain purposes, treated as acquired at the time of the division. Further, shares in a transferring company that is not dissolved on the division are also deemed acquired at the time of the division for capital gains purposes.[586]

Permission must be obtained from the DTA unless certain conditions are fulfilled. Permission is required in any of the following circumstances:

(i) Companies owning at least 10% of the shares in the participating companies dispose of their holdings within three years after the division was approved by the shareholders. The division does not become a taxable transaction if the shareholders subsequently participate in a tax-free reorganization provided the consideration in the tax-free reorganization consists solely of shares. The three-year holding requirement then applies to such shares.

(ii) Shares in the transferring company have, within the last three years prior to the division, been sold or transferred between group related companies.

(iii) There is more than one shareholder in the transferring company and one or more such shareholders have owned their shares for less than three years without controlling the majority of the votes in the transferring company and at the same time are, or as a result of the division become,

[579] TFM, Sec. 6.1 and 4.

[580] C-28/95.

[581] TFM, Sec. 15.2.

[582] TFM, Sec. 15.2; CTA, Sec. 4A.1 and .2 and Sec. 8B.

[583] TFM, Sec. 15.3.

[584] TFM, Sec. 15.4.

[585] TFM, Sec. 15a.

[586] TFM, Sec. 15b.4.

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shareholders in the receiving company controlling the majority of the votes in that company.

(iv) Any of the shareholders in the transferring company that is taxed as a trader in shares and at the same time may receive dividend distributions tax-free from the transferring company receives any consideration other than shares in the receiving company.

(v) The transferring company is controlled by one or more shareholders domiciled in a country that is not an EU Member State or EEA country, or a country with which Denmark has not concluded a tax treaty.[587]

(vi) The value of the shares and any cash settlement received does not correspond to the market value of the assets and liabilities transferred.

(vii) The ratio between the assets and liabilities transferred to the receiving company does not correspond to the ratio between the assets and liabilities of the transferring company.

(viii) No cash consideration is paid to any corporate shareholders that are tax-exempt with respect to the shares in the participating companies.[588]

If an application for approval is filed with the DTA, one of the conditions for approval is that one of the main objects of the transaction should not be tax evasion or avoidance (see (2), above.) Similarly, when reviewing an application, the DTA will require the taxpayer to submit a reasoned explanation of the commercial background for the transaction. The fact that tax savings play a significant role is not sufficient ground for refusing an otherwise commercially justified transaction.

If the division is effected without permission having been obtained from the DTA, notification of the division must be filed with the DTA no later than one months after the decision to implement the division.[589]

If the transferring company is not dissolved in connection with the division, the assets and liabilities transferred must constitute a "branch of activity," as defined in the Merger Tax Directive. A "branch of activity" means all the assets and liabilities of a division of a company that, from an organizational point of view, constitute an independent business, that is to say, a unit capable of functioning by its own means.[590] In determining whether this condition is fulfilled, the DTA will take into consideration whether the assets and liabilities to be transferred constitute an independent unit when compared with the entire business in question. Further, it will be necessary for the branch of activity to have sufficient means to conduct its business operations independently.

The succession principle described under (1)(a), above, applies with regard to assets transferred to a receiving Danish company or a PE of a foreign company.[591]

If the shareholders in the transferring company receive consideration other than shares in the receiving company, the shares in the transferring company are deemed sold and as such subject to capital gains taxation. Consideration other than shares received by shareholders that, after the division, hold shares in any of the participating companies (or group related companies) is treated as a dividend distribution from the transferring company.[592]

The receiving companies are required to file a tax return on behalf of a company being dissolved as a result of the division, from the beginning of the income year until the date of division. The receiving companies are jointly liable for the payment of any corporate taxes and fines.[593]

(4) Asset Transfers

Transfers of assets may also be effected tax-free under the Act on Tax-Free Mergers.[594]

A "transfer of assets" is defined as an operation in which a company, without being dissolved, transfers one or more or all branches of its activity to another company in exchange for the transfer of securities representing the capital of the company to which the assets are transferred.[595]

In general, it is a condition that the transferring as well as the receiving companies are companies within the meaning of Article 3 of the Merger Tax Directive and that the transferring company is not treated as transparent for Danish tax purposes. It is a further condition for a tax-free transfer of assets that the transfer date is the same as the date on which the annual accounts of the receiving company begin and that the consideration paid consists of shares only.

A branch of activity is defined as all the assets and liabilities of a division of a company that, from an organizational point of view, constitute an independent business, that is to say, a unit capable of functioning by its own means.[596] In determining whether this condition is fulfilled, the DTA will take into consideration whether the assets and liabilities to be transferred constitute an independent unit when compared with the entire business in question. Further, it will be necessary for the branch of activity to have sufficient means to conduct its business operations independently. If the transferring company has to guarantee the loan facilities granted by a bank, the branch cannot be considered to be capable of functioning by its own means.

No capital gains taxation is imposed on the transfer of assets by a Danish company to another Danish company or to a PE in Denmark of a foreign company.[597] Nor does the transfer of assets from a Danish PE of a foreign company to a Danish company give rise to any capital gains taxation.[598] The principle of succession described in V.B.10.b.(1)(a), above, in connection with tax-free mergers also applies to asset transfers.[599]

The shares issued by the receiving company in exchange for the transfer are deemed to be acquired for an amount equal to the fair market value of the assets and liabilities transferred. A calculation of the tax value of the shares received must be

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[587] TFM, Sec. 15a.1.
[588] TFM, Sec. 15a.2.
[589] TFM, Sec. 15b.5.
[590] Merger Tax Directive, Art. 2(j).
[591] TFM, Sec. 15b.1.
[592] TFM, Sec. 15b.4.
[593] TFM, Sec. 15b.3.
[594] TFM, Sec. 15c.
[595] TFM, Sec. 15c.2.
[596] TFM, Sec. 15c.2.
[597] TFM, Sec. 15d.1.
[598] TFM, Sec. 15d.3.
[599] TFM, Sec. 15d.2.

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filed together with the tax return for the income year in which the transfer takes place.

A tax-free transfer of assets may only be carried out without the permission of the DTA having to be obtained if the transferring company does not dispose of shares received for a period of three years. The transfer of assets does not become a taxable transaction if the shareholder subsequently participates in a tax-free reorganization provided the consideration in the tax-free reorganization consists solely of shares. The three-year holding requirement then applies to such shares.

As in the case of mergers with foreign companies and divisions, if an application for permission is filed with the DTA, one of the conditions for approval is that one of the main objects of the transaction should not be tax evasion or avoidance. (See V.B.10.b.(2), above.) Similarly, when reviewing an application, the DTA will require the taxpayer to submit a reasoned explanation of the commercial background for the transaction. The fact that tax savings play a significant role is not sufficient ground for refusing an otherwise commercially justified transaction.

If the transfer is carried out without the permission of the DTA having been obtained, notification of the transfer must be filed with the DTA no later than one month after the transfer takes place.[600]

(5) Share Exchanges

An exchange of shares may be effected tax-free in accordance with the Act on Taxation of Gains and Losses on Shares.[601]

An exchange of shares is defined in the Merger Tax Directive[602] as an operation in which a company acquires a holding in the capital of another company so that it obtains a majority of the voting rights in that other company in exchange for the issue to the shareholders of that other company, in exchange for their securities, of securities representing its capital (i.e., the capital of the first company) and, if applicable, a cash payment not exceeding 10% of the nominal value of those securities. The 10% requirement does not apply under Danish law. A tax-free exchange of shares is not possible if the transferring or receiving entity is considered a transparent entity for Danish tax purposes.

The succession principle also applies in the case of exchanges of shares (see (1)(a), above). The shares acquired for the shares exchanged are deemed to be acquired at the same time and for the same price as the shares exchanged. Either the shares must be issued by a company covered by the Merger Tax Directive or, if they are issued by a company incorporated outside the European Union, the company must be similar to a Danish A/S or ApS.[603]

The majority requirement is met even if the receiving company immediately following the exchange is divided in a tax-free reorganization.[604]

[600] TFM, Sec. 15.c.11.
[601] TGLS, Sec. 36.
[602] Merger Tax Directive, Art. 2(e).
[603] TGLS, Sec. 36.1.
[604] TGLS, Sec. 36.2.

An exchange of shares must be carried out, at the latest, within six months after the agreed date of exchange.[605]

Shares in an investment company[606] may only be exchanged for shares in another investment company.[607] The same limitation applies to shares in distributing investment associations[608] and share-based investment associations.[609]

Permission to apply the rules on tax-free exchange of shares must be obtained from the DTA unless the following conditions are fulfilled:[610]

(i) The receiving company does not dispose of the shares received for a period of three years. The transfer of assets does not become a taxable transaction if the shareholder subsequently participates in a tax-free reorganization provided the consideration in the tax-free reorganization consists solely of shares. The three-year holding requirement then applies to such shares.

(ii) The fair market value of the shares and any cash consideration received in exchange for the shares transferred must correspond to the market value of the shares transferred.

(iii) A shareholder that holds a controlling influence over the transferred company exchanges the shares for shares in a company domiciled in a country that is an EU Member State or an EEA country, or a country with which Denmark has a tax treaty.

As discussed in V.B.10.b.(2), above, one of the conditions for approval, if an application for permission is filed with the DTA, is that one of the main objects of the transaction should not be tax evasion or avoidance. Similarly, when reviewing an application, the DTA will require the taxpayer to submit a reasoned explanation of the commercial background for the transaction. The fact that tax savings play a significant role is not sufficient grounds for refusing an otherwise commercially justified transaction.

If the tax-free share exchange is carried out without the permission of the DTA having been obtained, notification of the exchange must be filed with the DTA at the latest when the tax return is filed for the income year in which the exchange took place.[611]

11. Shipping Income

Shipping companies may elect to be taxed under the Act on Taxation of Shipping Business.[612] The tax is not based on net income but is a fixed tax depending on the tonnage of the vessel in question.

Companies that are fully taxable in Denmark under the Corporate Tax Act and that conduct shipping business, as defined, and foreign companies that are subject to limited taxation under the Corporate Tax Act and that are domiciled in another

[605] TGLS, Sec. 36.4.
[606] TGLS, Sec. 19.
[607] TGLS, Sec. 36.3.
[608] TGLS, Sec. 22 and TAA, Sec. 16C.
[609] TGLS, Sec. 21.2.
[610] TGLS, Sec. 36.6.
[611] TGLS, Sec. 36.7.
[612] Consolidated Act No. 500 of March 22, 2021, Act on Taxation of Shipping Business (*Tonnageskatteloven* or TSB), as amended.

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EU Member State may elect to be taxed under the provisions of the Act on Taxation of Shipping Business. The election is not available to a branch of a foreign company that, under the laws of the country in which the foreign company is established, is treated as a transparent entity unless the company is a member of a group that has elected to be taxed under the Act.[613]

The election may be made from the beginning of the income year in which the conditions for the election are fulfilled and at the latest when the tax return is filed. An election is binding for a 10-year period; on the expiration of this period, a new election may be made. If the taxpayer decides not to be taxed under the Act on Taxation of Shipping Business on the expiration of a 10-year period, a new election to be taxed under the Act may be made only after 10 years have elapsed from the time of expiration. An election must cover all vessels and other qualifying assets owned by the taxpayer concerned.[614]

If a shipping company controls or is controlled by another shipping company or if the same natural or legal persons control a number of shipping companies, all controlled shipping companies, including foreign companies that are jointly taxed with the Danish companies or that are subject to Danish CFC taxation, must make the same election. However, shipping companies may choose not to make the same election if they have no common management, are not members of the same administrative organization (for example, if the companies are run from the same place of business or use the same facilities) and do not conduct related business activities.[615] Control is defined as direct or indirect ownership exceeding 50% of share capital or direct or indirect control of more than 50% of votes.

If a shipping company becomes a member of a group, the 10-year period for which the election is binding runs from the time when an election was last made by a member of the group. If all shipping companies have not elected taxation under the Act on Taxation of Shipping Business, the 10-year period runs from the income year in which the companies become members of the same group.[616]

Taxable income derived in connection with the commercial transportation of passengers and goods between different destinations on board vessels:

(i) Owned by the shipping company concerned;

(ii) Hired on a bareboat charter; or

(iii) Hired on a time charter,

may be taxed under the Act on Taxation of Shipping Business if each of the vessels concerned has a gross tonnage of 20 tons or more and the vessels are managed, strategically and from a business standpoint, from Denmark,[617] and the condition discussed immediately below concerning maintenance of gross tonnage is fulfilled.

During an income year, the shipping company is required to maintain or increase the percentage gross tonnage owned by it that is registered in an EU Member State or an EEA country to be able to avail itself of the beneficial tax treatment under the Act on Taxation of Shipping Business. For purposes of determining whether this requirement is met, the basis for the calculation is the gross tonnage owned on January 12, 2005. Shipping companies subject to taxation under the Act on January 17, 2004, may elect this date for purposes of the calculation. If a shipping company becomes subject to taxation at a later date, the gross tonnage owned on that later date is the basis for the calculation.[618]

This requirement does not apply if the gross tonnage owned by all shipping companies subject to the Act has not on average been reduced during the preceding income year, provided the gross tonnage could have been used for purposes encompassed by the Act on Taxation of Shipping Business and the shipping company concerned is registered in an EU Member State or an EEA country.[619] Further, the requirement does not apply if, on an average basis, at least 60% of the gross tonnage owned by the shipping company that is used for purposes of the Act is registered in an EU Member State or an EEA country. The object of these provisions is to bring the legislation in line with the guidelines issued by the EU Commission concerning state aid to shipping companies.[620]

If the requirement described above is not met, the shipping company is taxed under the provisions of the Corporate Tax Act to the extent of the income from the increased gross tonnage that could have been encompassed by the Act on Taxation of Shipping Business but that is registered outside the European Union or the EEA.[621]

Income from vessels owned by a shipping company but on hire to third parties may only be taxed under the Act on Taxation of Shipping Business if the hiring company uses the vessels for purposes that would qualify for taxation under the Act. Income from a vessel hired out on a bare-boat charter may be taxed under the Act if the reason for hiring it out is temporary excess tonnage capacity and the vessel is only on hire for three years or less. This provision may only be invoked once for the same vessel by the same taxpayer.

If the gross tonnage on average available to a shipping company during the income year is more than four times the gross tonnage owned by the shipping company, income from the excess share of the tonnage hired will be taxed in accordance with ordinary provisions. Vessels hired on a bare-boat charter are for these purposes considered to be vessels owned by the shipping company. This is also the case if a vessel is hired on a gross charter basis for a maximum period of seven years, provided the shipping company is granted an option to purchase the vessel at market value at the end of the term of the charter.[622]

Income from the following does not qualify for taxation under the Act on Taxation of Shipping Business:

(i) Preliminary surveys, or exploration for, and the extraction of, hydrocarbons or other natural resources.

(ii) Fishing and processing business.

[613] TSB, Sec. 1.
[614] TSB, Sec. 2.
[615] TSB, Sec. 3.1.
[616] TSB, Sec. 4.1.
[617] TSB, Sec. 6.
[618] TSB, Sec. 6a.
[619] TSB, Sec. 6a.2.
[620] TSB, Sec. 6a.3.
[621] TSB, Sec. 6b.
[622] TSB, Sec. 7.

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(iii) The building and repair of harbors, piers, bridges, oil installations, windmill parks or other installations at sea, the building of pipelines on the seabed, dredging or similar business.

(iv) Diving business.

(v) Loading when the vessel is used in, and in the vicinity of, a harbor.

(vi) Tugging, unless the vessel carries out tugging operations at sea for at least 50% of the time the vessel is operational during an income year. It is a condition that the vessel should be registered in an EU Member State or an EEA country.

(vii) Passenger transport in or across harbors.

(viii) Activities carried out for educational, social or learning purposes.

(ix) Museums and conservation activities.

(x) Sports, excursions and recreational activities.

(xi) The use of permanently moored vessels irrespective of the purpose.[623]

Digging machines, floating barges, floating docks, cable drums, oil rigs, floating containers and similar devices are not considered vessels for purposes of the Act on Taxation of Shipping Business. Barges are not considered vessels unless they are capable of carrying goods and their gross tonnage is 2,000 or more.

Shipping companies deriving both income subject to the Act on Taxation of Shipping Business and other kinds of income must compute shipping income separately from the other income.[624]

Besides income from the transportation of goods and passengers, the following income may be included in income subject to the Act on Taxation of Shipping Business if the activities concerned are conducted in close connection with the shipping business:[625]

(i) Income from the use of containers;

(ii) Income from the operation of loading and unloading, and maintenance facilities;

(iii) Income from the operation of ticket and passenger terminals;

(iv) Income from the operation of office facilities;

(v) Income from the sale of goods for consumption on board;

(vi) Deemed rent for the use by the shipping company of cabins on board;

(vii) Income from the renting of cabins on board;

(viii) Income from the administration of a pool of vessels provided: all the vessels in the pool are subject to taxation under the Act or, in the case of foreign vessels, could have been subject to taxation had they been owned by a Danish or an EU shipping company; at least two of the vessels are of the same type; and the pool encompasses vessels not owned by the shipping company; and

(ix) Capital gains on vessels subject to the Act or that could have been subject to the Act.

Income derived from all transport services is subject to taxation under the Act on Taxation of Shipping Business to the extent the taxpayer subject to taxation under the Act has entered into an agreement with a third-party contractor concerning transportation services not subject to taxation under the Act. If the transportation services are provided by the taxpayer itself, the income must be divided into income subject to taxation under the Act and income subject to tax under ordinary provisions.[626]

Net finance expenses after possible limitation under Section 11B of the Corporate Tax Act (see V.B.4.a.(3), above) and net finance income are taxed under the ordinary rules. Gains and losses on financial contracts securing income subject to taxation under the Act on Taxation of Shipping Business are allocated to the income in question.[627]

Taxpayers applying the Act on Taxation of Shipping Business are required to adhere to the arm's-length principle in controlled transactions.[628] Under the Act, tax is levied on the taxable income amounts for each vessel per 100 net tons per day, irrespective of whether the vessel is in operation. The rates for 2024 are: DKK 11.32 (up to 1,000 net tons), DKK 8.13 (1,001–10,000 net tons), DKK 4.86 (10,001–25,000 net tons), and DKK 3.20 (over 25,000 net tons).[629]

No depreciation is available for purposes of calculating tax under the Act on Taxation of Shipping Business and none of the deductions available for ordinary income tax purposes may be claimed. A particular expense or type of income that is related to activities subject to taxation under the Act and to other activities must be divided in proportion to gross income, as determined for ordinary income tax purposes before depreciation and financial income and expenses.

Depreciable assets used prior to the election being made for taxation under the Act on Taxation of Shipping Business must be accounted for in a transitional account. The election does not result in a step-up in basis or taxation of recaptured depreciation. The balance of the transitional account is depreciated at the rate of 25% per annum. The amount depreciated cannot be deducted for ordinary income tax purposes or from the income subject to tax under the Act.

Assets acquired after the election for taxation under the TSB is made are accounted for in a settlement account, the balance of which is depreciated at the rate of 25% per annum.

If the balance of the transitional account becomes negative, it may be settled by a positive balance of the settlement account. If the balance is still negative, the taxpayer must in-

[623] TSB, Sec. 8.
[624] TSB, Sec. 9.
[625] TSB, Sec. 10.
[626] TSB, Sec. 11.
[627] TSB, Sec. 12.
[628] TSB, Sec. 13.
[629] TSB, Sec. 15.

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clude the negative amount in ordinary taxable income.[630] Credit for foreign freight taxes may be claimed.[631]

Companies that are fully taxable in Denmark under the Corporate Tax Act and that conduct an operating business, as defined, and foreign companies that are subject to limited taxation under the Corporate Tax Act and that are domiciled in another EU Member State may elect to be taxed under the provisions of the Act on Taxation of Shipping Business.[632] To make this election, the operator must have full responsibility for the operation of the vessel(s) and assume all liabilities and obligations under the International Safety Management (ISM) code as adopted by the International Maritime Organization. The election is also binding on the operator for a 10-year period, as described above.

Income may be taxed under the Act on Taxation of Shipping Business if it is derived from commercial business concerning the administration of crew and the technical management of vessels that are used for purposes falling within the Act.

Each vessel must have a gross tonnage of at least 20 tons and the vessels must be strategically and commercially run from an EU Member State. In addition, the operator must maintain or increase the percentage of the gross tonnage managed by the operator that is registered in an EU Member State or an EEA country.

This requirement does not apply if gross tonnage operated by all operating companies is subject to the TSB, provided the gross tonnage could have been used for purposes encompassed by the TSB and provided the operating company is registered in a Member State of the EU or the EEA, and the gross tonnage has not on average been reduced during the preceding income year. Further, the requirement does not apply if, on an average basis, at least 60% of the gross tonnage operated by the operating company that is used for purposes of the Act is registered in an EU Member State or an EEA country.

If the requirement described above is not met, the operating company is taxed under the provisions of the Corporate Tax Act to the extent of the income from the increased gross tonnage that could have been encompassed by the Act, but that is registered outside the European Union and the EEA.

[630] TSB, Sec. 16.
[631] TSB, Sec. 21.
[632] TSB, Sec. 21a.

12. General Anti-Avoidance Rule

As of May 1, 2015, a general anti-avoidance rule (GAAR) was introduced in accordance with the provisions of Council Directive 2015/121/EU of January 27, 2015, amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. The provision was expanded in 2018 to implement the ATAD.

The GAAR is implemented into Danish tax law in Section 3 of the Tax Assessment Act. Under the provision, (in determining their income and calculating their taxes) taxpayers are deemed to disregard an arrangement or a series of arrangements that, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances.[633]

An arrangement may comprise more than one step or part.

For these purposes, an arrangement or a series of arrangements will be regarded as not genuine to the extent it is not put into place for valid commercial reasons that reflect economic reality.[634]

This provision effectively applies to Danish domestic tax law and also rules provided for under EU Directives, including the Merger Tax Directive, the EU Parent-Subsidiary Directive and the EU Interest and Royalties Directive.

Further, a GAAR was introduced with regard to the benefits of tax treaties. Under this provision, taxpayers are not entitled to enjoy the benefits of a tax treaty if it is reasonable to conclude, taking all relevant facts and circumstances into consideration, that the achievement of a benefit under the treaty is one of the main objects of any arrangement or transaction that directly or indirectly leads to the achievement of the benefit, unless it is demonstrated that the achievement of the benefit is in accordance with the contents and the object of the particular provisions of the treaty.[635]

If an EU taxpayer can invoke both a tax treaty and an EU Directive, the GAAR applicable with respect to Directive benefits takes precedence over the GAAR introduced with respect to tax treaties.[636]

[633] TAA, Sec 3.1.
[634] TAA, Sec 3.2.
[635] TAA, Sec. 3.5.
[636] TAA, Sec. 3.6.

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VI. Taxation of Foreign Corporations

A. *What Is a Foreign Corporation?*

A foreign corporation is a corporation, association, etc., established in a form similar to a fully taxable Danish corporation, that does not have its registered place of business in Denmark and is not effectively managed in Denmark.

Whether a foreign entity is deemed to have a form similar to that of a Danish corporation and is consequently classified as a tax opaque corporation for Danish tax purposes is determined on a case-by-case assessment specific to each individual foreign entity. A decisive criterion in this assessment is generally whether one or more shareholders, members or participants in the entity is/are fully liable for the obligations of the entity. Such liability supports a classification as a tax transparent entity (see VIII.C., below).

B. *Determination of Taxable Income*

1. *In General*

A corporation, association, etc., registered in a foreign country and not effectively managed in Denmark is taxable in Denmark only on the following Danish-source income:[637]

(i) Income derived from a permanent establishment (PE) in Denmark, including fixed payments from a PE that cannot be characterized as dividends, royalties or repayments of a loan. Gains realized on the disposition of assets used in connection with such activities are also taxable. Gains on and dividends from shares connected to a PE are taxable, unless the PE is a Danish company that is considered transparent under the Danish rules on hybrid mismatches in the Corporate Tax Act (see further, below). The term "permanent establishment" is generally construed in accordance with the Organisation for Economic Cooperation and Development (OECD) Model Convention (see below).

(ii) Income from real property situated in Denmark, including income from the leasing, and gains realized from the sale, of such property.

(iii) Income in the form of dividends from Danish registered companies. A contribution to a group company as defined in Section 31D of the Corporate Tax Act is treated as a dividend if the receiving company would have been subject to tax on the contribution had it been a parent company of the company making the distribution. Dividends distributed by a Danish subsidiary company, as defined in Section 4A of the Act on Taxation of Gains and Losses on Shares (see V.B.3.b., above), to a nonresident company are exempt from Danish withholding tax if relief is provided for under Council Directive 2011/96/EEC of November 30, 2011, on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States or under a pertinent double taxation agreement the "Parent-Subsidiary Directive")[638] (subject, *inter alia*, to the recipient qualifying as the beneficial owner of the dividends — see VI.C., below regarding the concept of beneficial ownership). Dividends distributed by a Danish group company, as defined in Section 4B of the Act on Taxation of Gains and Losses on Shares (see V.B.3.b., above), that is not a subsidiary company to a nonresident company are exempt from Danish withholding tax if relief would have been provided for under the Parent-Subsidiary Directive or an applicable double taxation agreement had the shares been shares in a subsidiary. Further, dividends received by members of parent companies that are listed in the exhibit to Council Directive 2011/96/EEC that are considered transparent for Danish tax purposes are exempt from Danish taxation.[639] The members may not be residents of Denmark.

Otherwise, dividends paid by a Danish corporation to a nonresident corporation are subject to a withholding tax of 22%. A reduced rate of 15% applies if an agreement concerning the exchange of information has been concluded with the country in which the dividend-receiving company is domiciled, provided the dividend-receiving company owns less than 10% of the shares in the dividend-paying company. If the shareholder is domiciled outside the European Union, the shareholder and any companies in the same group as the shareholder must own less than 10% of the Danish company.[640]

(iv) Interest paid on controlled debt by a Danish resident entity or a Danish PE.[641] A foreign lender will be deemed to control a Danish borrower if the lender owns or controls more than 50% of the shares or voting rights in the borrower, either directly or indirectly. Votes and shares held by "group-related" entities, controlling shareholders and their close relatives, including trusts, etc., established or settled by such parties, are also taken into account when determining whether the threshold of more than 50% is exceeded. In this context, "group-related" means that two or more entities directly or indirectly are controlled by the same group of shareholders or that the entities are under common management. If an agreement has been made between the lender and non-related shareholders for purposes of "exercising a common controlling influence" over the Danish entity, votes and shares held by such non-related shareholders may be taken into account.

The party making the interest payment is required to withhold tax at the rate of 22%. The tax withheld is a final tax unless a lower rate is applicable under a tax treaty. A number of exceptions to the limited tax liability on interest and, thus, the withholding tax, apply. The provision is not triggered with regard to payments of interest to a foreign company:

- That has a PE in Denmark to which the interest income is allocated and, as such, is subject to taxation on the interest payment;

[637] CTA, Sec. 2.
[638] CTA, Sec. 2.1c.
[639] CTA, Sec. 2.1c.
[640] TSA, Sec. 2.11.
[641] CTA, Sec. 2.1d.

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• That falls within the scope of Council Directive 2003/49/EC of June 3, 2003, on a common system of taxation applicable to interest and royalty payments made between associated companies of different EU Member States, provided that the paying and receiving companies have been associated, as defined in the Directive, for a period of one year during which the payment must be made and the recipient qualifies as the beneficial owner of the interest payments (see VI.C., below, regarding the concept of beneficial ownership);

• That falls within the scope of a tax treaty under which taxation is waived or reduced, provided the recipient qualifies as the beneficial owner of the interest payments (see VI.C., below, regarding the concept of beneficial ownership);

• That is controlled by a Danish company or over which a Danish company may exercise significant influence for a continuous period of at least one year during which the payment is made — control and significant influence being defined in accordance with Section 31C of the Corporate Tax Act, i.e., control of more than 50% of the votes in the dividend-paying company;

• That is controlled by, or is subject to significant influence from, a company in another country with which Denmark has concluded a tax treaty, provided the company may be subjected to controlled foreign company (CFC) taxation in that other country and does not pay the interest to another foreign company that would fall within Section 32 of the Corporate Tax Act; or

• If the receiving company is able to demonstrate that the foreign tax on the interest amounts to at least three-quarters of the Danish tax that would otherwise be imposed on the interest and that the interest is not paid to another company that is subject to tax on the interest that is less than three-quarters of the Danish tax that would otherwise be imposed.

(v) Remuneration for personal services rendered in Denmark to a Danish resident employer if the remuneration would have been subject to tax at source if paid to an individual.[642]

(vi) Management fees paid to a foreign company 25% or more of whose share capital is owned, or 50% or more of whose votes are controlled, by an individual who has been fully taxable in Denmark and has had such control over the company at any time within the last five years prior to the termination of the individual's full tax liability in Denmark.[643]

(vii) Royalty payments. Royalty payments are subject to a withholding tax of 22%. The tax liability does not encompass royalties falling within Council Directive 2003/49/EC of June 3, 2003, on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (the "Interest and Royalties Directive"). This exemption only applies if the paying and receiving companies are associated, as defined in the Directive, for a period of at least one year within which the royalty payment must be made. However, no withholding tax applies with respect to a royalty payment made to the PE in Denmark of a foreign corporation, as such royalty payments are subject to corporate income tax in the hands of the Danish PE.[644]

(viii) Capital gains on controlled debt (see above at (iv)), which are repayable at a predetermined premium.[645]

A foreign corporation is subject to limited tax liability in that it is only taxed in Denmark on income from the sources listed above.

Income from a PE, Danish real property or management fees subject to limited taxation is generally subject to the same rules, principles and deductions as the income of a Danish corporation, and the ordinary Danish corporate income tax rate of 22% applies to the net income. Income is calculated in one basket and losses from one source may be set off against gains from other sources.[646]

The withholding tax on dividends, interest, royalties and income from personal services constitutes a final tax (subject to reduced rates under an applicable tax treaty, if any) that cannot be reduced by losses from other sources. For the rates of source country taxation applying to investment income, services income and capital gains under Denmark's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

Under special provisions in the Hydrocarbon Tax Act, companies participating in oil and gas exploration activities in Denmark, including offshore activities, are liable to tax on income derived from such activities (see IV.J., above). Further, foreign pension funds resident in the European Union or the European Economic Area (EEA) are generally entitled to a reduced tax rate of 15% with respect to income from Danish real property.

2. Permanent Establishments

The Danish Corporate Tax Act does not contain a definition of the term "permanent establishment" but, in general, the term is construed in accordance with Article 5 of the OECD Model Convention. Accordingly, a PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

A foreign corporation may generally be deemed to have a PE by virtue of either: (i) having a fixed place in Denmark; or (ii) having certain types of agents acting on its behalf in Denmark.

A foreign corporation will be deemed to have a fixed place of business in Denmark (which may constitute a Danish PE) if it has one of the following in Denmark (list not exhaustive):

(i) A place of management;

(ii) A branch;

[642] CTA, Sec. 2.1e.
[643] CTA, Sec. 2.1f.
[644] CTA, Sec. 2.1g.
[645] CTA, Sec. 2.1h.
[646] CTA, Sec. 9.

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(iii) An office;

(iv) A factory;

(v) A workshop;

(vi) A mine, or an oil or gas well; or

(vii) Any other place for extracting natural resources.

It should be noted that participation in a building and construction site constitutes a PE, without regard to the duration of the work, from the first day business is established under Danish domestic tax law. However, if Denmark has concluded a double taxation agreement with the country in which the foreign enterprise is based, Denmark will generally not have a right to tax income allocated to the construction site unless the work on the construction site lasts for more than 12 months.

An agent acting in Denmark on behalf of a foreign corporation may be deemed to constitute a PE in Denmark of the foreign corporation if the agent habitually concludes contracts on behalf of the foreign corporation (the "agent rule"). A dependent agent does not constitute a PE if the agent is not employed by the foreign enterprise and the agent only conducts sales activities that qualify as distance sales. A distance sale is defined as the acceptance of orders by the agent from Danish or foreign customers by phone, telex, telefax, post, Electronic Data Exchange (EDE) or the like. It is further a condition that neither the foreign enterprise nor a group company should conduct business that is connected with the sales activities carried on by the agent.

Denmark has ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI — see XIII.A.1., below), which may expand the PE definition used by Denmark and other jurisdictions with which Denmark has concluded a double taxation agreement, provided they have also ratified the MLI. A Danish PE may, thus, be deemed to exist specifically in the following three scenarios in addition to the scenarios referred to above (depending, however, on whether the party to the relevant double taxation agreement has made an election to amend the PE definition to this effect, as well as Denmark):

(i) Where a dependent agent habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts routinely concluded without material modification by the foreign enterprise;

(ii) Where an independent agent acts exclusively, or almost exclusively, on behalf of the foreign enterprise and the independent agent is closely related to the foreign enterprise; or

(iii) Where the foreign enterprise or a closely related enterprise carries on activities in Denmark, and the overall activity resulting from the combination of the activities carried out in Denmark is not of a preparatory or auxiliary character, although the activities may be considered preparatory or auxiliary in nature when viewed separately (the "anti-fragmentation rule").

Special rules apply with regard to a PE for a passive investor. Accordingly, investments in shares and the acquisition of debenture claims and financial instruments subject to taxation under the Act on Taxation of Gains on Claims and Debentures constitute a PE only to the extent the foreign investor is engaged in the trade or business concerning such shares and instruments. However, an anti-avoidance rule applies to the splitting up of activities so that a foreign investor will nevertheless be deemed to have a PE in Denmark if a natural or legal person controlling the foreign investor (or controlled by the foreign investor) conducts such business in Denmark and the investor's passive business is an integral part of the investor's business.[647] Even if a foreign corporation has a fixed place of business in Denmark through which its business is carried on or engages qualifying agents in Denmark, a PE may nevertheless be deemed not to exist if the activities in Denmark are of a preparatory or auxiliary nature.

If the activities of a foreign company in Denmark constitute a PE, the foreign company is subject to Danish taxation, at the corporate income tax rate (see V.B.6., above), only on the income that can be allocated to the PE. The allocation of income, expenses, assets and capital gains follows the principles laid out in Article 7(2) of the OECD Model Convention. Thus, the income of a PE is calculated as the profits that the PE might be expected to make (including from transactions with other parts of the enterprise that the PE is a part of) if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the PE (unless another method of allocating income to the PE follows from an applicable double taxation agreement).[648]

If, on the other hand, a foreign company conducts its business in Denmark through a subsidiary, the subsidiary will be taxed as a Danish corporation on its worldwide income (save with respect to income and expenses in a foreign PE, see V.B.1., above).

In considering the maximum presence a foreign company may have without subjecting itself to Danish income taxation, it is important to take into account the changes made to the Commentary on Article 5 of the OECD Model Convention from time to time, as Denmark generally interprets the definition of a PE in accordance with the OECD Model Convention's definition of a PE.

A Danish branch of a foreign company is (provided the branch constitutes a PE) subject to the same filing requirements as a Danish company (see V.B.8., above).

C. *Taxation of Shares in Danish Subsidiaries*

1. *Capital Gains and Losses*

Generally, foreign corporations are not taxable on capital gains or losses realized on shares in Danish companies, regardless of the shareholding.

However, a foreign corporation holding shares in a Danish company is taxable on capital gains on (and may deduct losses from) such shares if the shares are attributable to a PE in Denmark, including gains and losses on shares forming part of the PE's fixed capital.[649]

[647] CTA, Sec. 2.6.
[648] CTA, Sec. 2.7.
[649] CTA, Sec. 2.1.a.

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It should be noted that a disposal of shares may be requalified as a dividend distribution (which may be subject to withholding tax, see VI.C.2., below) in the event of, *inter alia*, a sale of shares to a Danish company having issued the shares, receipt of liquidation proceeds in certain situations, certain capital decreases, and receipt of consideration in certain reorganizations (merger, demerger, etc.).

2. Dividend Distributions

a. Holding Requirements and Qualifying Companies

Dividends distributed by a Danish company to a nonresident company are generally subject to a final withholding tax; however, significant exemptions apply with respect to dividends received on shares of a company qualifying as a subsidiary and group shares. In general, it is a prerequisite for withholding tax exemption that the recipient qualify as the beneficial owner of the dividends (see further below).

Dividends distributed by a Danish subsidiary company, as defined in Section 4A of the Act on Taxation of Gains and Losses on Shares (see V.B.3.b., above), to a nonresident company are exempt from Danish withholding tax if relief is provided for under the Parent-Subsidiary Directive or an applicable double taxation agreement.[650]

Further, dividends distributed by a Danish group company, as defined in Section 4B of the Act on Taxation of Gains and Losses on Shares (see V.B.3.b., above), that is not a subsidiary company to a nonresident company are exempt from Danish withholding tax if relief would have been provided for under the Parent-Subsidiary Directive or an applicable double taxation agreement had the shares with respect to which the dividends are paid been shares in a subsidiary. Further, dividends received by members of parent companies listed in the exhibit to the Parent-Subsidiary Directive that are considered transparent for Danish tax purposes are exempted from Danish taxation.[651] The members may not be residents of Denmark.

For dividends distributed by Danish unlisted portfolio companies as defined in Section 4C of the Act on Taxation of Gains and Losses on Shares (see V.B.3.b., above), a reduced withholding rate of 15.4% applies if the dividend is distributed to a Danish company.

Dividends are otherwise subject to withholding tax at the rate of 22%. A reduced rate of 15% applies if an agreement concerning the exchange of information has been concluded with the country in which the dividend-receiving company is domiciled. The dividend-receiving company must own less than 10% of the shares in the dividend-paying company. If the shareholder company is domiciled outside the European Union, the shareholder company and any group companies must own less than 10% of the Danish company.[652]

b. Tax-Free Distributions

The Corporate Tax Act does not lay down any requirements as to the kind of foreign company to which tax-free distributions can be made. A foreign holding company should, however, have some substance. A legal entity merely inserted between a Danish company and the ultimate shareholders, who otherwise would not have qualified for relief, runs the risk of being set aside by the Danish Tax Agency (*Skattestyrelsen* — DTA). It is important to note that the DTA generally places high emphasis on the concept of "beneficial ownership" as a criterion for the application of tax treaties and the EU Directives with respect to withholding tax exemptions.

The concept of "beneficial owner" is not defined or accurately described under Danish tax law. According to Danish case law, the Danish position on the concept of beneficial ownership is generally to be interpreted in accordance with the guidelines provided in the Commentary on the OECD Model Convention. The Minister of Taxation indicated in May 2009, when answering questions in connection with a bill submitted to the Danish Parliament, that an intermediate holding company may not automatically be disregarded. The Minister stated: "A holding company cannot be classified as an agent or a nominee. Such a company is registered and fully taxable in the country of domicile and the starting point is that a holding company enjoys treaty protection."

Certain reporting requirements must be met in connection with any dividend distribution. The accountant elected by the shareholders in the foreign parent company must forward a statement to the Danish subsidiary confirming that the above holding requirements are met. The foreign parent and the Danish subsidiary must, within a month from the date on which a dividend is declared, file a special form with the DTA stating: (i) the name, address, and tax number of the Danish subsidiary; (ii) the name of the foreign parent; (iii) the date on which the dividend is declared; and (iv) the amount involved. The dividend must be distributed no later than 18 days after the date of the annual general meeting at which it was declared. It should be noted that Danish companies may only make distributions in accordance with accounts approved at an annual general meeting and may not make interim distributions.

On December 20, 2011, the Eastern Court of Appeals held that a Luxembourg holding company was the beneficial owner of shares in a Danish company and, as such, entitled to a dividend distribution without any tax being withheld. The court found it of importance that the distribution was re-lent to the Danish company immediately after the distribution was made.

In a more recent binding tax ruling from the Danish Tax Council,[653] the DTA made the following statement:

> The reason for the requirement that the recipient be the beneficial owner of the dividends is to prevent tax evasion and misuse. As a starting point it cannot be considered misuse if the dividend distribution is passed on to a company incorporated in a treaty country or in an EU Member State,
>
> • If the beneficial owner receives exactly the same amount received by the first company,
>
> • The dividend is not taxed differently in the country of the recipient as compared to the taxation that would have been imposed had the amount been paid directly from Denmark to the beneficial owner, and

[650] CTA, Sec. 2.1.c.
[651] CTA, Sec. 2.1c.
[652] TSA, Sec. 2.11.

[653] SKM2014.13.SR.

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• The amount was received and taxed in the same year and in the same manner as if it had been paid directly from Denmark to the beneficial owner.

The DTA's statement was approved by the Danish Tax Council in the binding ruling.

In another binding tax ruling,[654] the Tax Council found that the capital gains on shares from a Danish company that was being liquidated were not subject to Danish taxation, even though the amounts were passed on by the receiving company, because the ultimate recipients were an Italian and a U.S. company, i.e., both were incorporated in treaty countries.

More recently, the Danish Eastern High Court, in a decision of February 19, 2016, referred six cases to the Court of Justice of the European Union (CJEU) on the interpretation of beneficial ownership with respect to withholding tax on dividends and interest payments where the Parent-Subsidiary Directive and the Interest and Royalties Directive apply (Cases C-115/16, C-118/16, C-119/16, C-299/16, C-116/16 and C-117/16).

In these six Danish cases, the CJEU was asked multiple questions concerning the conditions under which a company paying dividends or interest to a related company can be denied an exemption from withholding tax under the Parent-Subsidiary Directive or the Interest and Royalties Directive. In the national Danish cases, the DTA took the view that there was avoidance of Danish withholding tax through the use of intermediary holding companies controlled by entities that otherwise would not have access to the benefits of the Parent-Subsidiary Directive or the Interest and Royalties Directive.

On February 26, 2019, the CJEU handed down its judgments in the two Danish dividend cases (joined cases C-116/16 and C-117/16) and in the four Danish interest cases (joined cases C-115/16, C-118/16, C-119/16 and C-299/16).

With respect to the dividend cases, the CJEU first examined whether Denmark can rely on domestic Danish or treaty-based anti-abuse rules to combat an abuse under the Parent-Subsidiary Directive, if it has not implemented Article 1(2) of the Parent-Subsidiary Directive. The CJEU noted that EU law prohibits abusive practices as a general principle and concluded that Denmark should refuse the benefits of an EU Directive even in the absence of domestic or other anti-abuse provisions.

The CJEU concluded that it is for the referring Danish court to assess whether the arrangements under review in fact constitute an abuse of EU law, but the CJEU nonetheless provided further guidance as to the constitutive elements of an abuse of EU law in the case of, *inter alia*, intermediary holding companies.

In accordance with settled case law, the CJEU concluded that an abusive practice can be evidenced in the combined presence of objective elements (the purpose of the EU Directives has not been achieved, despite the formal observance of the conditions required for their application) and subjective elements (the intention to obtain an advantage from EU rules by artificially creating the conditions laid down for obtaining it).

According to the CJEU, the presence of some indicators may demonstrate an abusive practice or structure in the case of an intermediary holding company. The CJEU emphasized the need for economic activity in or justification for a given structure. This assessment must be made by assessing all the relevant factors in an individual case, including:

(i) Whether a group structure is set up for reasons not reflecting economic reality (*inter alia*, where, because of the interposition of a conduit entity in the structure of the group between the company that pays dividends and the company in the group that is their beneficial owner, payment of tax on the dividends is avoided).

(ii) Whether all or almost all of the dividends are, very soon after their receipt, passed on by the company that has received them to entities that do not fulfill the conditions for the application of the Parent-Subsidiary Directive.

(iii) Whether the company that receives the dividends paid by the debtor company must itself pass those dividends on to a third company that does not fulfill the conditions for the application of the Parent-Subsidiary Directive.

(iv) Whether the sole activity of the receiving company is to act as the recipient of dividends (the absence of actual economic activity must be inferred from an analysis of all the relevant factors, including, in particular, the management of the intermediate company, its balance sheet, its cost structure and the expenditure actually incurred related to the staff it employs and to the premises and equipment it has available).

(v) Whether the intermediate company is economically entitled to the income (or is contractually or in fact obliged to forward the income).

(vi) Whether the structure in terms of timing has been set up in connection with the entry into force of new tax legislation.

With respect to the importance of the alleged ultimate beneficial owner being resident in a third country that has concluded a tax treaty with the source country, the CJEU concluded that the existence of such a treaty cannot on its own rule out the existence of an abusive situation. However, the CJEU also stated that it remains possible, in a situation in which dividends would have been exempt had they been paid directly to the company with its seat in a third country, that the aim of the group's structure is unconnected with an abuse of rights. In such a case, the group cannot be reproached from a tax perspective for having chosen such a structure rather than direct ownership and payment of the dividends.

Accordingly, on remand, it was still for the Danish Eastern High Court to assess whether the arrangements under review in the two Danish beneficial ownership cases constitute an abuse of rights under the Parent-Subsidiary Directive, taking into account, in particular, the existence of conduit companies and the guiding indicators provided by the CJEU.

The first of the Danish beneficial cases (C-117/16) comprised two dividend distributions from a Danish company to its ultimate parent, a U.S. company, through Cyprus and Bermuda.

The Eastern High Court ruled that no withholding tax was due on the first dividend distribution from Denmark to Cyprus, which was in turn re-distributed to Bermuda (a non-treaty jurisdiction for Danish tax purposes), and which was again re-

[654] SKM2014.167.SR.

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distributed to a U.S. parent company. The Court found that the Danish company could rely on treaty protection under the U.S.-DK tax treaty even though the U.S. parent was not the direct recipient of the dividend.

For the other dividend distribution, the Eastern High Court ruled that withholding tax did apply as it found that the company was not able to substantiate exactly when and how the dividend was up-streamed to the U.S. parent company and was therefore not able to rely on the U.S.-DK tax treaty on in respect of this dividend payment.

Both rulings were subsequently appealed to the Danish Supreme Court, which handed down its ruling in January 9, 2023.

With regards to the first dividend distribution, the Supreme court reversed the ruling of the Eastern High Court, holding that the dividend distribution was subject to withholding tax. The Court found that the U.S. parent company was in fact not the beneficial owner of the dividend as the dividend remained with the intermediary Bermuda company for approximately five months where it was placed in bonds, before it was decided to redistribute the dividend to the U.S. company and that the group during this period was free to decide how to utilize the dividend. Thus, the U.S. parent company did not qualify as the beneficial owner of the dividend and the Danish company was liable for withholding tax at source.

With regards to the second dividend distribution, the ruling of the Eastern High Court was again reversed by the Supreme Court as the Court found, in accordance with claims of the Danish company, that the dividend was included in a distribution from the Bermuda company to the U.S. parent as part of an effort to repatriate profits. The actual dividend was not paid from Denmark until 2010 even though the dividend was approved in 2006, however the Court attached importance to the fact that the Bermuda company had taken out a loan to cover the dividend payment to the U.S. parent company in 2006 in anticipation of receiving the dividend. As such, the U.S. company was deemed to be the beneficial owner, and the dividend distribution did thus not trigger a Danish withholding tax obligation with reference to the U.S.-DK tax treaty.

The second beneficial ownership case (C-116/16) concerned a dividend distribution to a Luxembourg company. The Eastern High Court found that the dividend was ultimately intended to be redistributed to private equity funds behind the Luxembourg company and the underlying owners of said funds. As such, the Luxembourg company did not have sufficient substance and the Court held that the distribution constituted an abuse of rights.

This case was also appealed to the Danish Supreme Court, which upheld the ruling of the High Court. The Supreme Court found that the Danish company had supplied insufficient information about the use of the distributed dividend once it had reached the Luxembourg company.

Comment: The main take-aways from these beneficial ownership cases are:

(i) Provided that a tax treaty is concluded between the country of residence of the deemed beneficial owner and Denmark, treaty benefits can be invoked even though the deemed beneficial owner is not the direct recipient of the dividend;

(ii) If the dividend is flowing up through a structure, it is crucial for the beneficial owner assessment that the dividend is redistributed rather quickly to the beneficial owner. Otherwise, there is a risk that one of the companies in the structure will be deemed the beneficial owner from a Danish tax perspective instead;

(iii) It is important that the distributing company can show and document what has happened to the dividend further up the chain if the dividend is redistributed.

It is expected that, in future court cases, the Danish Tax Ministry will argue before the courts that the statements made by the CJEU with respect to the concept of beneficial ownership and abuse of law should be included in the Danish Court's interpretation of beneficial ownership in the relevant Danish tax treaties.

If a dividend recipient is deemed to not be the beneficial owner, a dividend distribution will be subject to ordinary withholding tax at the rate of 22%.

Furthermore, the GAAR introduced with effect from May 1, 2015, should be borne in mind in this context. For further discussion, see V.B.12., above.

c. Dividend Distributions to Recipients in EU Blacklist Jurisdictions

As discussed in V.B.4.f., above, Denmark has, pursuant to Act No. 788 of May 4, 2021, adopted certain defensive measures against recipients in countries and territories on the EU's blacklist.

According to Section 2.8 of the Corporate Tax Act, dividends distributed by a Danish subsidiary company, as defined in Section 4A and 4B of the Act on Taxation of Gains and Losses on Shares (see V.B.3.b., above), to a nonresident company resident in an EU blacklist country or territory is subject to an increased tax rate of 44%. The Danish subsidiary is required to withhold income tax at a final rate of 44%.[655]

Even if the recipient is not resident in a blacklist country or territory, the increased withholding tax rate of 44% applies if the prima facie recipient is not the beneficial owner of the dividend distribution and the payment is passed on to a recipient in a blacklist jurisdiction. However, the provision does not apply if the beneficial owner of the dividend distribution is resident in an EU or European Economic Area (EEA) Member State or in a country with which Denmark has concluded a tax treaty.

The increased withholding tax rate applies in respect of dividends that are distributed on or after July 1, 2021.

[655] TSA, Sec. 65.12.

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VII. Taxation of Foreign Operations

A. *Foreign Branches*

If a Danish company organizes its business operations abroad in the form of a branch that is deemed to constitute a permanent establishment (PE), the income derived from the branch is generally exempt from Danish corporate income taxation. This also applies to income from foreign real property.[656] The term "permanent establishment" is generally construed in accordance with Article 5 of the OECD Model Convention. However, under Danish domestic law, a building site constitutes a PE from day one of its existence. See VI.B.2., above.

The exemption provision does not apply if the right to tax the kind of income concerned is conferred on Denmark under a tax treaty or other international agreement. For example, it may be agreed under the terms of a tax treaty that Denmark may tax income derived by a Danish resident company from a building site abroad if the work lasts for 12 months or less, as the building site will not constitute a PE until the construction work has lasted for more than 12 months. In that case, i.e., where the work lasts for 12 months or less, the income derived from the building site by the Danish company will not be exempt from Danish corporate taxation (even though a building site is considered a PE from day one under Danish domestic law). Income derived from shipping and air transport, as defined in Article 8 of the OECD Model Convention, is not covered by the exemption provision.[657] Thus, Denmark has the right to tax income derived from business within shipping and air transport if the business is resident in Denmark.

Nor does the provision apply if the taxpayer elects to be jointly taxed in accordance with the rules on international joint taxation.

Further, if the income generated by the foreign PE is classified as controlled finance corporation (CFC) income and CFC taxation would have been triggered had the branch been a company, then the income generated by the PE must be included in the annual income statement of the Danish corporation of which it is a PE and must be accounted for in accordance with Danish tax law.[658]

A Danish company may elect annually to include in its taxable income the income from a foreign PE that uses a mobile oil rig.[659] Losses generated by such a PE may only be set off against positive income generated by the PE in subsequent years. The transfer of assets to such a foreign PE does not in itself trigger taxation of any capital gains, but a subsequent sale of such assets may.[660]

All expenses related to non-exempt foreign-source income are deductible. The amount of taxable net income from foreign sources is determined in accordance with the relevant Danish tax rules, so that, for example, Danish tax provisions govern the amount of deductible expenses and regulate the extent to which property and assets may be depreciated. Depreciable assets are deemed depreciated from the time the assets were originally acquired according to Danish rules until the time the assets are transferred.

A Danish company may be entitled to a foreign tax credit under the terms of an applicable tax treaty or under the provisions of Danish domestic law.[661] For further details, see V.B.5., above.

B. *Foreign Subsidiaries*

Dividends received on shares in foreign subsidiary companies, as defined in Section 4A of the Act on Taxation of Gains and Losses on Shares, or on shares in foreign group companies, as defined in Section 4B of that Act, are generally tax exempt.[662] See V.B.3.b., above, for the definition of shares in subsidiary and group companies.

The exemption provision does not apply if the dividend-paying company can deduct the dividends for income tax purposes unless relief can be claimed under the Parent-Subsidiary Directive. Further, dividends from investment companies, as defined in Section 19 of the Act on Taxation of Gains and Losses on Shares, do not qualify for the exemption.

It should be noted that tax exemption may be restricted under the general anti-avoidance rule (GAAR) introduced into Danish tax law. The GAAR is described at V.B.12., above.

Distributions on shares in a foreign company that are neither subsidiary shares or group shares, as defined above, are to be included in the taxable income of the Danish dividend-receiving company and taxed at the standard rate of 22%.

Relief from foreign taxation is available. The income tax of the dividend-receiving company is reduced by an amount equivalent to the ratio between the total income tax and the tax on the dividends. The tax cannot be reduced by an amount exceeding the actual tax paid by the subsidiary. The dividend-receiving company must own at least 10% of the shares in the dividend-paying company at the time the distribution is made.[663]

If the dividends received are from a foreign investment company that is or has been a foreign company for Danish tax purposes and the rule described in the preceding paragraph does not apply, the Danish dividend-receiving company may apply for relief from Danish taxes levied on the dividends received from the investment company.[664] However, the relief may not exceed the amount of taxes that the foreign investment company has to pay on dividends declared to its parent. Finally, if none of the provisions described above apply, the parent company may claim relief for the foreign taxes paid on the foreign dividends, but the relief may not exceed that part of the Danish tax that can be allocated on a proportional basis to the dividend income from the foreign dividend-paying company.[665]

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[656] CTA, Sec. 8.2.
[657] CTA, Sec. 8.2.
[658] CTA, Sec. 8.2.
[659] CTA, Sec. 8.3.
[660] CTA, Sec. 8B.
[661] TAA, Sec. 33.
[662] CTA, Sec. 13.1.2.
[663] CTA, Sec. 17.2.
[664] CTA, Sec. 17.3.
[665] TAA, Sec. 33.

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VIII. Taxation of Partnerships

A. In General

Partnerships are widely used in Denmark particularly as private equity investment vehicles and as vehicles for investment in large depreciable assets, such as ships, wind turbines and real property. Partnerships enable flexible structures in which participant taxation can be structured and planned.

Partnerships are also extensively used by professional service providers, such as lawyers, accountants, and management consultants whose businesses are often organized as partnerships, with the individual consultants as partners.

In this section, the term "partnership" is used as a collective term for a general partnership (*Interessentskab* or I/S), a limited liability partnership (*Kommanditselskab* or K/S) and a partnership limited by shares (*Partnerselskab* or P/S).

B. Indirect Tax Classification

For purposes of indirect taxation, such as value added tax (VAT) (as well as excise duties and energy levies), partnerships are considered ordinary taxable persons and are not subject to any special regimes. Consequently, they may be registered for VAT and must levy and deduct VAT under the same rules as other taxable persons.

C. Direct Tax Classification

For purposes of direct taxation, such as corporate income tax, partnerships are not regarded as separate taxable entities under Danish tax law and are, therefore, transparent or disregarded for tax purposes. The implications of the transparency of partnerships for direct taxation purposes are, to a wide extent, unregulated under Danish tax law, but have been subject to a considerable body of case law.

As tax-transparency follows from a partnership not being recognized as a separate, tax-opaque entity under the definition of taxable entities found in the Corporate Tax Act, a foreign entity may also be regarded as a transparent "partnership" for Danish tax purposes. Although this determination is based on an assessment that is specific to each foreign entity, based on decisions and rulings from the Danish tax authorities, the following factors (non-exhaustive) favor a foreign entity being regarded as an opaque entity:

(i) None of the participants in the entity is fully liable for the obligations of the entity;

(ii) Profits of the entity are split between the participants according to participations in the entity;

(iii) The entity has its own articles of association;

(iv) The entity maintain separate annual accounts;

(v) It is possible to expand the number of participants in the entity; and The entity has a minimum of subscribed capital.

The following factors (non-exhaustive) are in favor of a foreign entity being regarded as transparent entity:

(i) Revenue and liquidation proceeds are split between the participants based on revenue;

(ii) One or more of the participants are personally fully liable for the obligations of the entity;

(iii) Profits are not split according to each investors participation; and

(iv) Profits are contributed to non-profit or charitable organizations.

Because a partnership is a transparent entity, foreign partners in a Danish partnership may be deemed to have a permanent establishment (PE) in Denmark for tax purposes as a consequence of their participation, as they — for tax purposes — will be regarded as having undertaken the partnership's business activities in Denmark directly.

Individuals or companies participating in a partnership are taxed on their share of the profit or loss as shown in the accounts of the partnership. An individual partner's share of profits and losses may be regulated by agreement with the other partners and may, therefore, differ depending on ownership percentage or the lack of full equality among the participants in the partnership.

Gains, losses and depreciation on a partnership's assets are, however, divided among the partners based on an "individual interest," understood as the partners' share of ownership in each of the partnership assets. This share may be fixed in the bylaws of the partnership or, by default, be divided equally among the partners.

The actual taxation of a partnership's results — including gains, losses, and depreciation with respect to the partnership's assets — is determined at the participant level and, therefore, ultimately depends on the tax classification and position of the individual partners.

Special rules apply with respect to a partnership with more than 10 participants where some of the participants are not actively engaged in the operations of the partnership. In such cases, the partnership must complete actual tax accounts that will serve as the basis for determining the taxable income of the individual partners deriving from their participation in the partnership.

The right of partners in a limited liability partnership (i.e., a K/S or a P/S) to deduct partnership losses and apply depreciation on partnership assets in computing their taxable income is limited to the total invested and committed amount. If they are fully liable for the obligations of the partnership (i.e., in the case of an I/S), no limitation applies.

For taxation purposes, any change in the percentage of a partner's individual interests, as well as the exit or introduction of a partner, will be treated as a change in the partners' ownership of each of the partnership's individual assets. Consequently, on such a change, the partners will be deemed to have either partially sold or acquired (as applicable) a stake in the assets of the partnership. Similarly, a purchase or sale of assets from the partnership is regarded as a sale of the asset undertaken by the individual partners according to their individual interests. Changes in the assets of, and/or the partners in, a partnership may therefore give rise to tax consequences for all the partners.

D. Hybrid Entities

A branch of a foreign company or a foreign partnership or similar tax transparent entity registered, domiciled or effective-

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ly managed in Denmark is taxed as a Danish corporation if one or more associated nonresident entities holding in aggregate a direct or indirect interest in 50% or more of the voting rights, capital interests or rights to a share of profit in the branch or entity are located in a jurisdiction or jurisdictions that:

(i) Regard(s) the entity as a separate entity for tax purposes (i.e., a tax-opaque entity);

(ii) Does/do not exchange information with Denmark under a double taxation agreement or other convention or agreement on mutual assistance in tax matters; or

(iii) Is/are non-EU Member States and have not concluded a double taxation agreement with Denmark governing, *inter alia*, the taxation of dividends distributed to corporate shareholders.[666]

The members of the transparent entity in these circumstances are not deemed to have disposed of its assets at market value at the time the entity is recharacterized as a Danish corporation,[667] unless the assets cease to be subject to Danish income taxation after the recharacterization.

Capital gains realized on the sale of shares in the transparent entity are taxed in the same way as capital gains realized on the sale of shares in ordinary corporations[668] and distributions made by the entity are treated as dividend distributions subject to withholding tax at the rate of 22%, unless relief is available under a double taxation agreement or the EU Parent-Subsidiary Directive.[669]

These provisions do not apply to collective investment vehicles covered by Directive 2009/65/EC of the European Parliament and of the Council of July 13, 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).[670]

[666] CTA, Sec. 2C.

[667] CTA, Sec. 2C.4.

[668] CTA, Sec. 2C.6.

[669] CTA, Sec. 2C.7.

[670] CTA, Sec. 2C.2.

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IX. Taxation of Other Business Entities

A. *Insurance Companies*

1. *In General*

Generally, insurance companies are covered by the Danish Corporate Tax Act and are subject to corporate income tax at the ordinary rate of 22%.

Insurance companies are allowed to deduct certain allocations to provisions for future claims and liabilities.[671] Allocations to these provisions are, however, to the greatest extent possible, set off against tax-exempt income and capital gains on shares and real property, such income being calculated on an annual mark-to-market principle.[672] The same rule applies to deductible payments to beneficiaries under insurance policies.

In general, insurance companies are taxed on a mark-to-market principle on their investments in shares and real property. For general insurance companies, however, in practice, the impact of these provisions is limited to the actual insurance business while the company's management of its own assets, etc., is subject to the ordinary rules and principles under the Corporate Tax Act.[673]

2. *Life Insurers*

Life insurance companies are partially subject to corporate income tax at the rate of 22% under the same rules as other insurance companies (see above), and partially subject to the Pension Yield Tax Act[674] in accordance with the same rules as pension funds and therefore subject to a tax rate of 15.3% (see IX.B., below).

The corporate income tax rules apply to a life insurance company's own investments and income, while the pension yield tax rules apply to the annual increase or decrease in the life insurance company's unallocated bonus reserves. When bonus reserves are allocated to individual pension savers, the allocation will reduce the unallocated bonus reserves and thereby the life insurance company's tax base. The allocated reserves will at the same time become subject to pension yield tax at the rate of 15.3% in the hands of the relevant pension saver(s).

Life insurance companies may elect to include income and gains from a portfolio investment in a tax-transparent partnership based on mark-to-market taxation of the annual increase or decrease in the value of the participation, plus any distributions or proceeds received from the partnership during the year, rather than having to report and include income or loss on a look-through basis for each underlying asset.[675] Such an election has binding effect for later income years as long as the life insurance company's savings are placed in the portfolio investment in question.[676]

[671] CTA, Sec. 13.3.
[672] CTA, Sec. 13.4.
[673] CTA. Sec. 13.5.
[674] Consolidated Act No. 185 of March 6, 2020, the Pension Yield Tax Act (*Pensionsafkastbeskatningsloven* or PYTA), as amended.
[675] CTA, Sec. 13F.
[676] CTA, Sec. 13F.5.

To mitigate double taxation, a real estate company held by a Danish life insurance company or pension fund is treated as a tax transparent entity. Such a real estate company is consequently not subject to corporate income tax. Instead, its income or losses are allocated to the life insurance company and/or pension fund that owns the real estate company.[677]

Certain qualifying labor market life insurance institutions are not subject to tax under the Corporate Tax Act but, instead, are only subject to tax under the Pension Yield Tax Act in the same manner as pension funds.[678]

B. *Pension Funds*

Pension funds are not subject to tax under the Corporate Tax Act but, instead, are subject to tax under the Pension Yield Tax Act. Under the Pension Yield Tax Act, a flat pension yield tax rate of 15.3% generally applies to the net aggregate annual increase or decrease in the value of a pension fund's investments and assets,[679] regardless of investment or asset type, plus any proceeds or income received on such investments or assets.[680]

A pension fund may elect to include income and gains from a portfolio investment in a tax transparent partnership based on mark-to-market taxation of the annual increase or decrease in the value of the participation, plus any distributions or proceeds received from the partnership during the year, rather than having to report and include income or loss on a look-through basis for each underlying asset.[681] Such an election has binding effect for later income years.[682] Annual mark-to-market taxation is mandatory for portfolio investments in a K/S partnership in certain cases.[683]

To mitigate double taxation, a real estate company held by a Danish life insurance company or pension fund is treated as a tax transparent entity. Such a real estate company is consequently not subject to corporate income tax. Instead, its income or losses are allocated to the life insurance company and/or pension fund that owns the real estate company.[684]

According to the Danish Tax Agency (*Skattestyrelsen* — DTA), the pension yield tax qualifies as a tax on income covered by Denmark's tax treaties.

C. *Other Organizations*

Other types of entities, such professional associations and societies, labor unions, trusts, and educational and charitable foundations, are generally qualified as separate taxable (tax-opaque) entities. Certain associations are liable to tax under rules essentially similar to those described in V., above, for joint stock companies and private limited companies.[685] Foundations are taxed under the Act on Taxation of Foundations.

[677] CTA, Sec. 3A.
[678] CTA, Sec. 3.1.18.
[679] PYTA, Sec. 2.
[680] PYTA, Sec. 15.3.
[681] PYTA, Sec. 14.
[682] PYTA, Sec. 14.5.
[683] PYTA, Sec. 16.
[684] CTA, Sec. 3A.
[685] CTA, Sec. 2.1a.

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If a taxpayer transfers assets to a foreign trust or similar entity, whether or not the trust was created by the taxpayer, at a time when the taxpayer is fully taxable in Denmark, any positive income generated by the trust must be included as taxable income of the taxpayer. This provision also applies to the creation of, and transfers to, a trust by an individual settlor at a time when he or she was not fully taxable in Denmark, and the creation of, and transfers to, a trust not created by the taxpayer, if he or she was previously fully taxable and the creation or transfer took place during the 10-year period immediately before the individual resumed full tax liability in Denmark.

The income of a trust is allocated proportionally if the trust has more than one settlor or transfers were made by more than one taxpayer.

The rules also apply if a trust is created by a company controlled by the taxpayer, provided the taxpayer would have been taxable had the taxpayer created the trust.

The provisions do not apply if:

(i) The taxpayer demonstrates that the creation of the trust requires the settlor to renounce irrevocably any rights with respect to the assets transferred;

(ii) The taxpayer demonstrates that the assets of the trust are distributed exclusively for the public good or otherwise distributed to a wider group of beneficiaries for the public good;

(iii) The taxpayer demonstrates that the assets of the trust exclusively are used for the pension purposes of a wider group of individuals who are not related to the settlor; or

(iv) The taxpayer demonstrates that the trust is an investment company within the meaning of Section 19 of the Act on Taxation of Gains and Losses on Shares.

The income of the trust is determined under the rules applicable to individual taxpayers. Any losses may be carried forward and set off in subsequent income years, in accordance with the rules applicable to individual taxpayers. Excess losses of a trust cannot be set off against taxable income of a settlor or a transferee.

Prior to January 1, 2023, associations could apply for an exemption from withholding tax on dividends received from Danish companies ("*Udbyttefrikort*"). However, in order to comply with current EU law, as from this date all associations are subject to withholding tax of 15% on dividends distributed by Danish companies. An exception applies in cases where the association is a non-profit organization, including foreign non-profits.

D. Cooperative Societies

Cooperative societies are subject to taxation based[686] on the value of their net assets rather than on their income or profits. Depending on how their trading activities are structured, the taxable basis is assessed as 4% to 6% of net assets.[687] Cooperative societies are taxed at the rate of 14.3% of their taxable basis.[688] For the statutory requirements as to the organization of cooperative societies, see III.A.5., above. Usually, members' liability is limited to the capital contributed and profits are distributed based on turnover or the volume of each member's transactions with the society.

E. Estates

Estates of the deceased under administration in Denmark are subject to income tax under the Act on the Taxation of Estates. Estates with assets below certain limits are exempt from income tax (but subject to estate duty, see IV.D., above). The exemption applies to an estate with net assets or gross assets of up to DKK 3,272,500 (2024) at the time the final accounts of the estate are made.[689] An estate with assets exceeding these limits is subject to income and capital gains tax at a rate of 50%, except for income and gains from shares, which are taxed at a rate of 27% up to DKK 61,000 (2024) and at a rate of 42% on the excess over that amount, if any. Gain realized on the sale of the private home of the deceased is not taxable.

F. Bankruptcy Procedure for Companies and Individuals

The Bankruptcy Tax Act[690] governs the tax treatment of bankrupt individuals and companies.

1. Companies

A bankrupt company is not subject to income tax, unless the DTA decides that the bankrupt company is taxable on its income. The income of the bankrupt company comprises the net income from the beginning of the financial year in which the bankruptcy order is granted until the bankrupt company is finally dissolved.

If the DTA decides that the bankrupt company is subject to tax, the income of the bankrupt company must be calculated under the ordinary rules for determining corporate income, but an allowance of DKK 100,000 is granted. Taxable losses incurred before the year in which the bankruptcy order is granted may be carried forward and set off against the income of the bankrupt company. Any losses incurred during the period in which a bankrupt company is under administration may also be set off against its taxable income.

The liquidator must, at the latest when filing a statutory report with the Probate Court (Administrative Court), file the same statutory report with the DTA, which then decides whether the bankrupt company is taxable. The DTA will generally rule that a bankrupt company is to be subject to income tax if it is reasonable to assume that its taxable income reduced by any losses carried forward will exceed DKK 100,000. An appeal may be made against the decision of the DTA.

A bankrupt company that is subject to tax must file tax returns in accordance with the ordinary rules. A bankrupt company is taxed at the ordinary corporate tax rate of 22%.

Joint taxation is rescinded from the financial year in which the bankruptcy order is granted, but the other companies in the joint taxation may — subject to certain limitations — be held liable for the income taxes of the bankrupt company.

[686] CTA, Sec. 1.1.3.
[687] CTA, Sec. 16.
[688] CTA, Sec. 19.
[689] Consolidated Act No. 426 of March 28, 2019 (*Dødsboskatteloven*), Sec. 6.
[690] Consolidated Act No. 353 of March 28, 2019, the Bankruptcy Tax Act (*Konkursskatteloven* or BTA), as amended.

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2. Individuals

In the case of an individual, the income and expenses relating to the assets and liabilities of a bankrupt estate during the period from the granting of the bankruptcy order until the bankruptcy proceedings are finally concluded are subject to the Bankruptcy Tax Act. Also included is any income the individual may have from the beginning of the tax year in which the bankruptcy order is granted until the time the order is granted. However, any remuneration for personal services is excluded.

If the estate pays salary or other amounts to support the bankrupt individual, those amounts must be included in the individual's taxable income. If the bankrupt individual receives dividends, 70% of such dividends must be included in the bankrupt income.[691] Any taxes withheld cannot be refunded but are set off against any taxes payable by the bankruptcy estate.

The income of a bankrupt individual is taxed at the rate of 45%.[692] An allowance of DKK 100,000 is granted.

The Act imposes certain limitations on the right to carry forward tax losses for years before the year in which the bankruptcy order is granted.[693] Such losses cannot be set off against the debtor's income, or the income of his or her spouse, in the year in which the bankruptcy order is granted or in any subsequent year. However, such losses, as well as losses incurred until the bankrupt proceedings are finally concluded, may be set off against the bankruptcy income.

[691] BTA, Sec. 11.2.
[692] BTA, Sec. 11.5.
[693] BTA, Sec. 12.

3. Composition Agreements

The relinquishment of any debt under a composition agreement with a debtor's creditors is not taxable, subject to certain conditions. The composition will generally qualify if all significant creditors are parties to the composition and, collectively, represent more than 50% of the total debt of the debtor.[694] A relinquishment is, however, taxable if the debt is reduced to an amount lower than the fair market value of the debt claim at the time of relinquishment.

The relinquishment of intercompany debt is not taxable if the parent company cannot deduct such losses for tax purposes. Generally, such losses cannot be deducted for tax purposes.[695]

Even though a debt relinquished under a composition may not be taxable, any tax losses of the debtor will be reduced by the amount relinquished.[696] However, this provision does not apply in the case of relinquishment of intercompany debt. If the parent company of a Danish[697] subsidiary is a foreign company, a relinquishment is not taxable if the parent company can demonstrate that the loss is not deductible under its domestic legislation. In that case, losses carried forward will not be reduced.

G. Research and Development Companies

There is no patent box or similar intellectual property (IP) regime in Denmark, but certain R&D tax incentives are available. See V.B.4.b.(1), above.

[694] TGLC, Sec. 24.
[695] TGLC, Sec. 4.
[696] CTA, Sec. 12 – 12D.
[697] TGLC, Sec. 8.

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X. Taxation of Resident Individuals

A. *Scope of Taxation*

Danish tax legislation distinguishes between individuals subject to full/unlimited tax liability and individuals subject to limited tax liability. Individuals subject to full tax liability are, as a rule, liable to tax on their worldwide income and capital gains, while individuals subject to limited tax liability are taxed only on income and gains from specific Danish sources. The income year for tax purposes is the calendar year. Taxpayers conducting a business may, subject to certain limitations, elect another income year of a period of 12 months.

Under the Tax at Source Act, the following individuals are subject to full tax liability:[698]

(i) Individuals resident in Denmark.

(ii) Individuals who stay in Denmark without taking up residence if their stay, including short visits to foreign countries for vacation purposes or the like, exceeds six consecutive months.

(iii) Danish citizens serving or permanently resident on board Danish registered vessels, unless they demonstrate that they are resident abroad or have never been resident in Denmark. Foreign citizens who, before their service or stay on board, have been subject to unlimited Danish tax liability are, in this context, treated as Danish citizens.

(iv) Danish citizens employed by the government, who are sent abroad, and their families, unless they are liable to unlimited income tax in the foreign country concerned.[699]

If an individual is considered resident in a foreign state under a double taxation agreement, expenses incurred may generally only be deducted to the extent that, under the agreement, Denmark may tax the income to which the expenses relate.[700]

B. *Residence*

The Danish tax system has no statutory definition of residence. Generally, residence is broadly interpreted. Among the factors considered in determining whether an individual is resident in Denmark is whether the individual has indicated an intention of having a place of residence in Denmark by establishing a household of his or her own, by renting a flat or house, or by other means. In practice, an individual is considered resident in Denmark if a dwelling in Denmark is available to him or her all year round. The starting point is that such availability is a necessary and sufficient condition for being a resident of Denmark for tax purposes.

An individual previously resident abroad who acquire accommodation in Denmark does not, however, become subject to full tax liability unless he or she actually also settles in Denmark. An individual with short-term stays in Denmark for vacations or the like is not considered to have settled in Denmark.[701]

According to established case law, an individual who has stayed in Denmark for three consecutive months without interruption or who has stayed in Denmark for more than 180 days in total within a 12-month period is deemed to have settled in Denmark for tax purposes, as such a stay is not considered short-term. For purposes of calculating the length of the stay "broken days," such as the day of arrival or the day of departure, are counted as whole days. If the length of a stay exceeds one of these thresholds, full tax liability attaches to an individual who has secured accommodation in Denmark, and it is triggered on the first day of the stay. Moreover, an individual who works during a temporary stay in Denmark may become liable to tax in Denmark even if the time thresholds referred to above are not met. According to the Danish Tax Agency (DTA),[702] an individual who has an all-year dwelling available to him or her in Denmark and is carrying out any kind of income-generating work in Denmark during a temporary stay is generally deemed to have settled in Denmark and, thus, full tax liability is deemed triggered, because the stay under these circumstances is not considered short-term, such as a vacation. If, however, the work is merely of a certain single and sporadic income-generating nature, the individual is not deemed to have settled and full tax liability is thus not deemed to be triggered. For example, the Danish Eastern High Court in a specific case ruled that a model who worked sporadically on photo sessions in Denmark for a total of seven days during a 12-month period was not to be deemed fully tax liable in Denmark by virtue of her stay in Denmark.[703] Further, in a binding ruling, the National Tax Board found that an Italian resident individual, who was seconded to work in Denmark for a Danish company during a two-year period was not deemed to be fully tax liable to Denmark by virtue of either tax residency or the stay in Denmark.[704] The Italian individual would work in Denmark during weekdays, staying in different hotels, and would travel back to his home in Italy every Friday to spend the weekend with his family.

The full tax liability of individuals who have been resident in Denmark ceases when they give up their residence in Denmark. In determining whether residence in Denmark is terminated, it is generally decisive in practice whether the individual still has a permanent dwelling in Denmark available for his or her use. If the dwelling concerned is sold, leased or subleased under a contract that cannot be terminated by the lessor or sublessor for a period of at least three years, residence is normally considered to be terminated and full tax liability is considered to have ceased accordingly.

C. *Determination of Gross Income*

A resident individual is subject to full tax liability and, as such, liable to tax on his or her worldwide income (unless the individual is considered to be tax resident in another country under a tax treaty). Generally, income is broadly interpreted and taxable, whether received in cash or in kind.[705]

[698] TSA, Sec. 1.
[699] TSA, Sec. 1.1.
[700] TSA, Sec. 1.2.
[701] TSA, Sec. 7.
[702] DTA Legal Guide (*Den juridiske vejledning*) 2023-2, section C.F.1.2.2.
[703] SKM2012.732.ØLR.
[704] SKM2024.433.SR.
[705] NIT, Sec. 4.

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Under Danish tax law, a tax credit is granted for foreign taxes paid on income from a foreign source that is also subject to Danish taxation. If a tax treaty is in place between Denmark and the relevant foreign jurisdiction, it is also a condition that the foreign jurisdiction has an undisputed right to levy the taxes in question. The credit is the lesser of: (i) the foreign tax actually paid on the income; or (ii) the proportionate amount of the overall Danish tax payable that can be allocated to the foreign income.

Denmark has concluded a broad network of tax treaties. Most Danish treaties also apply the credit method. However, some treaties are still based on the exemption principle, which results in the foreign-source income being exempt from taxation in Denmark. However, in the case of treaties that use the exemption with progression method, the foreign-source income may be taken into consideration in determining the Danish taxes to be imposed on the remaining taxable income.

For purposes of calculating the total amount of income tax payable, income is classified into various categories, which are subject to different taxes and consequently taxed at different rates. The tax calculation rules for individuals and income categories that are relevant to the calculation are found in the Personal Tax Act, which refers to the following types of income: ordinary income; personal income; capital income; share income; and controlled finance corporation (CFC) income (for a definition of CFC income, see V.B.3.f., above).[706]

1. Ordinary Income

The Personal Tax Act does not contain a specific definition of the term "ordinary income" but it implies that ordinary income comprises personal income and capital income.

2. Personal Income

"Personal income" is defined as all kinds of ordinary income other than capital income and share income.[707]

An exhaustive list of the expenses that may be deducted from personal income is provided in the Personal Tax Act, including, in particular, the following costs:

(i) Expenses incurred during the income year to acquire, secure, and maintain business income (expenses incurred to establish or expand income sources are generally not deductible), except interest, losses on claims and certain allowances granted to fishermen;

(ii) Research expenses and other special expenses enumerated in the Personal Tax Act;

(iii) Contributions to certain pension plans;

(iv) Write-downs on inventory;

(v) Labor market contributions and foreign social security contributions;

(vi) Depreciation; and

(vii) Contributions to a reserve for starting one's own business.

3. Capital Income

An exhaustive list of the income and expenses that are to be included in the capital income category is contained in the Personal Tax Act, which defines "capital income" as the net amount of, *inter alia*, the following income and expenses:[708]

(i) Interest income and interest expenses;

(ii) Taxable gains and losses on the disposal of certain bonds, mortgages, futures, options and foreign exchange transactions;

(iii) Dividends not subject to share income taxation, including dividends from investment companies;

(iv) Certain capital gains on the disposal of shares in investment companies;

(v) Taxable gains or losses from the distribution of liquidation proceeds from certain cooperatives or the sale of shares in such cooperatives;

(vi) Profits or losses from the rental of private real property;

(vii) Fees paid in connection with borrowing, unless the term of the relevant loan exceeds two years;

(viii) Income from independent business activities if the number of owners exceeds 10 and the taxpayer does not participate in the running of the business to any significant degree, and income from forestry if the number of owners exceeds two and the taxpayer does not participate in the running of the business to any significant degree;

(ix) Income from the rental of depreciable assets and vessels, unless the taxpayer participates in the running of the business to any significant degree; and

(x) Net gains on commercial real property and taxable gains on certain private property.

4. Share Income

"Share income," which is separate category of income with respect to the tax calculation, is defined as the total of:[709]

(i) Dividend distributions from a domestic or foreign company, unless the distributing company is an investment company;

(ii) Proceeds from the sale of shares to the issuing company, which are taxed under Section 16B of the Tax Assessment Act, unless the issuing company is an investment company;

(iii) Taxable distributions from an investment fund investing in shares and qualified under Section 20 and 21 of the Act on Taxation of Gains and Losses on Shares; and

(iv) Gains and losses arising on the disposal of shares that are not shares in an investment company.

[706] Consolidated Act No. 1284 of June 14, 2021, the Personal Tax Act (*Personskatteloven* or PTA), as amended. Note that, while the abbreviation "CFC" is widely used to mean "controlled foreign corporation," in Denmark it is used to mean "controlled finance corporation," and covers both Danish and foreign companies.

[707] PTA, Sec. 3.1.

[708] PTA, Sec. 4.

[709] PTA, Sec. 4a.

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Gains realized by an individual subject to full tax liability on the disposal of shares in Danish or foreign corporations, except for shares in investment companies, are taxed as share income. Losses on unlisted shares may be deducted from the ordinary income of the taxpayer provided they were not listed during the period in which they were owned by the taxpayer.[710]

Losses on listed shares may only be deducted from dividends, gains and other distributions with respect to listed shares.[711] The availability of the tax deduction for losses on listed shares is conditioned on the DTA receiving certain information within a certain deadline relating to the acquisition of the shares. Excess losses may be carried forward indefinitely.[712] Gains and losses are generally calculated using an averaging method. Under this method, the average acquisition price of the entire holding of shares in the company concerned is, in the case of a partial disposal, allocated between the shares sold and the shares retained.[713] This allocation is based on the nominal value of the shares.

> *Example:* If 100 shares are acquired at a cost of 1.50 per share and 200 shares at a cost of 4.00 per share, the average acquisition cost per share is 3.16 (i.e., 150 + 800 = 950; 950/300 = 3.16). If 100 shares are sold for 600, the gain is 284 (i.e., 600 – 316 = 284).

Share income of up to DKK 61,000 (2024) is taxed at the rate of 27%; any amount in excess of this amount is taxed at the rate of 42%.

Shares acquired under a warrant or as owner shares will be deemed to have been acquired at the same time as the shares under which the right is exercised.

Subject to certain conditions, an individual can choose to apply the Danish Share Investment Tax Act[714] to investments in listed shares not exceeding a value of DKK 135,900 (2024). Under the Act, the share investments are subject to a flat tax of 17% imposed on the annual increase (or decrease) in the value of the shares, with the addition of any distributions or proceeds received on the shares during the relevant year.

5. Capital Gains

As a rule, under Danish tax law, capital gains and losses on assets (as distinct from income from the assets) are not included in the taxable income of individual taxpayers, except for capital gains and losses realized on the disposal of assets acquired by way of speculation or in the course of a business activity of the taxpayer.[715] However, this rule is today more theoretical than practical, as capital gains on the disposal of shares, real property, claims and debt and financial contracts, and intangible assets, as well as recaptured depreciation on depreciable assets used for business purposes, and inventory accounted for according to the mark-to-market principle, are now to a wide extent included in the taxable income of the taxpayer under a number of specific Danish tax acts regarding the respective assets.

For most practical purposes, this means that capital gains and/or recaptured depreciation realized on the disposal of a business asset are included in the taxable income of individual taxpayers whereas capital gains realized on the disposal of a private asset are not included in the taxable income of individual taxpayers except where the asset is covered under a specific Danish capital gains act or has been acquired by way of speculation or in the course of a business activity.

However, gains realized by an individual on the disposal of real property that has been used as his or her residence or a summer house are generally exempt from taxation, irrespective of the period of ownership, provided the taxpayer has actually lived in the property for some time during the period of ownership and the area of the land on which the property is erected is no more than 1,400 square meters, or, if it exceeds this figure, cannot be divided into two or more lots under public zoning regulations.[716]

As in many other countries, Denmark has given special attention to the tax treatment of cryptocurrencies over the past few years.

Denmark has no specific cryptocurrency laws, and cryptocurrencies are not considered legal tender. The DTA considers cryptocurrency as a mean of payment, making it possible to carry out transactions in a decentralized digital alternative currency that is not regulated by a central bank, and where the daily exchange rate is determined on the basis of free-market forces.

Under current law and practice, cryptocurrency is, as a starting point, taxed under Sections 4 and 5 of the NIT (see IV.A.1.a., above). Pursuant to Section 5 of the NIT, assets of a purely private nature can be disposed of tax-free, unless these assets are acquired for speculative purposes or as part of a business, either a for-profit business or hobby-based business.

In Danish tax practice, a distinction is thus made between acquiring cryptocurrency for speculation, or as part of a for-profit business, a hobby-based business basis or as a gift.

The buying and selling of cryptocurrency as an individual is, in practice, generally considered to be speculative, meaning it is assumed that cryptocurrency is purchased to make a profit. The burden of proof generally lies with the taxpayer, and gains and losses must be reported to the DTA when filing the annual tax return. Gains, if any, will be taxed as personal income and losses are deductible in the ordinary income category, meaning that losses are deductible with a lower tax value than the tax rate of the gains.

In line with the February 2023 decision of the National Tax Tribunal, [717] in January 2024, the National Tax Tribunal also decided that a taxpayer who was selling cryptocurrency for speculative purposes was not able to deduct the losses from the profits on a net basis as the case would be for hobby-based and other non-commercial businesses.[718] Since the losses neither arose from a trade or business involving cryptocurrency or other for-profit business, the losses could therefore not be de-

[710] TGLS, Sec. 13.2.
[711] TGLS, Sec. 13A.
[712] TGLS, Sec. 14.1 and 2.
[713] TGLS, Sec. 24.
[714] Act No. 1429 of December 5, 2018, on the Taxation of Share Investments (*Aktiesparekontoloven*), as amended.
[715] NIT, Sec 5.
[716] TGRP, Sec. 8.
[717] SKM2023.170.LSR.
[718] SKM2024.160.

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ducted when calculating the taxpayer's personal income. Accordingly, the taxpayer's loss was deductible only from ordinary income with a lower tax value.

The trading of cryptocurrencies as part of a for-profit business is taxed on an ongoing basis equal to any other business activity and, therefore, profit and losses are calculated on the basis of the amount realized. The standard criteria for assessing whether any trading constitutes a for-profit business should also apply to trading in cryptocurrency.[719] If the activity is characterized as a hobby business, any profit will be taxed as personal income, and losses will generally not be deductible, as only costs related to acquiring the source of income can be deducted.

Practice, thus far, has shown that where cryptocurrency is received as a gift, a disposal may be exempt from tax if it can be proved that the purpose was not for speculation or business activity. However, in September 2023, the National Tax Tribunal concluded that bitcoins are generally acquired — including when received as a gift — with the intent to be sold and can only be used as a means of payment to a limited extent, and therefore any profit from a sale of bitcoins — if the sale is an attempt to gain profit and thus for speculative purposes — should be taxed as personal income.[720]

The calculation of profits or losses must be based on the "asset-by-asset" method, meaning that gains and losses are calculated for the individual cryptocurrency in question. If it is not possible to identify the individual cryptocurrency, profits or losses are calculated based on the First In, First Out (FIFO) principle.[721] For tax purposes, the FIFO principle assumes that if a portion of the cryptocurrency is sold, the cryptocurrency which was acquired first, is considered sold first. It is not allowed to offset losses and gains from different types of cryptocurrencies.

In August 2022, the DTA introduced a new calculation method which applies when different types of crypto assets are being exchanged, such as when acquiring a quantity of bitcoin in exchange for a quantity of ether. The new method aims to enhance the accuracy of tax assessments by using precise exchange rates at the time of the transaction, rather than relying on closing prices, in order to obtain a more accurate valuation of the assets, particularly when a taxpayer does not provide the sufficient documentation.

Previously, the DTA calculated acquisition and disposal values based on the closing prices of the traded crypto assets, often resulting in discrepancies since the values in a trade ideally should be identical. If a taxpayer acquired bitcoin and then traded it for ether, for instance, the values of bitcoin and ether were calculated separately using their respective closing prices, leading to potential differences in the valuation.

Presently, the DTA now uses exchange rates at the exact time of the transaction, providing a more accurate valuation. The new method mandates that the value assigned to the acquired crypto asset must be identical to the value assigned to the disposed crypto asset at the time of the transaction. If a taxpayer trades bitcoin for ether, the value of the bitcoins being disposed of must thus match the value of the ether being acquired.

Furthermore, a list in prioritized order is used to determine which asset in a specific trade has the most valid valuation. The list is designed to ensure that the most reliable and stable crypto assets are used when calculating the tax base of a trade between different cryptocurrencies. Stablecoins, which are typically linked to fiat money like the U.S. dollar or euro, are given the highest priority because their values are generally less volatile compared to other crypto assets. This stability makes them a reliable benchmark for valuation. Following stablecoins, the list prioritizes other major crypto assets, such as bitcoin and ether. When trading, the asset with the highest priority on the list is used to determine the value of the transaction. For example, if a trade involves both a stablecoin and a major crypto asset, the stablecoin's value will be used for the tax calculation. Due to the DTA's change of practice, taxpayers can reopen under sections 26 and 27 of the Tax Administration Act.[722]

Where the taxpayer does not own or invest in cryptocurrency directly (i.e., he or she does it via an e-wallet, etc.), but acquires a certificate or instrument based on the performance of one or more underlying cryptocurrencies, the cryptocurrency certificate/instrument will generally be considered and taxed as a financial contract under the Act on Taxation of Gains and Losses on Claims, Debt and Financial Instruments, which provides for gains and losses on financial contracts to be included in the taxable income according to the mark-to-market principle, i.e., on an unrealized basis.

6. *Business Income*

Income from consulting services, etc. provided by a Danish tax resident individual as an independent contractor is, as a rule, included in the ordinary taxable income of the individual and, therefore, subject to a marginal tax rate of up to approximately 56% (based on the average Danish municipality tax rate). Costs related to such income generally qualify as tax deductible.

If the provision of consulting services by an individual qualifies as an actual independent business activity, the Danish Business Tax Act[723] may be applied subject to certain conditions, including that the accounts and assets of the business are effectively separated from the individual's personal accounts and assets.

The Business Tax Act results in the business income being subject to a flat tax rate of 22% (corresponding to the Danish corporate income tax rate). If and when the profits are withdrawn from the business, the withdrawn amounts are included in the personal income of the individual (see X.C.2., above), subject to a credit for the business tax that has already been paid.[724] Part of the profits withdrawn from the business is, however, treated as capital income and subject to a lower tax rate (see X.C.3., above). The amount of profits classified as capital

[719] SKM2024.287.LSR.
[720] SKM2019.78.SR.
[721] SKM2023.226.SR.
[722] SKM2024.218.SKTST.
[723] Consolidated Act No. 1359 of December 9, 2019, on the Taxation of Independent Contractors (*Virksomhedsskatteloven* or Business Tax Act), as amended.
[724] Business Tax Act, Sec. 10.

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income is calculated by multiplying the qualifying equity of the business by a standard interest rate (adjusted annually).[725]

7. Equity Incentives

Under Section 16 of the Tax Assessment Act, an employee is deemed to receive consideration taxable as salary if the employee pays less than the market value of shares, options or warrants at the time the employee acquires an unconditional right to such instruments. Under Section 28 of the Tax Assessment Act, the taxation of options or warrants is, however, deferred until the time of exercise or disposition.

To qualify under Section 28, the option must be a right to purchase shares in the company that employs the employee and the warrant must be a right to subscribe for new shares in that company. The option or warrant must be issued by the company in which the employee is employed or by a company belonging to the same group as the company in which the employee is employed, or the company in which the employee is employed must have acquired the option or warrant from a company that is a member of the same group (for the definition of a group company, see V.B.3.b.(3), above). If the company issuing the option or warrant is a member of the same group of companies as the company in which the employee is employed, the option or warrant must be issued by the company from which shares may be acquired or in which new shares may be subscribed for.

Under Section 28, taxation is triggered when the stock option or warrant is exercised or disposed of. The value to be recognized and reported as taxable salary for tax purposes is the net value of the option or warrant at the time of exercise or disposal (i.e., the positive difference between the market value of the share and the exercise price under the option or warrant). This provision also applies to stock options or warrants granted to members of the board of a company. No election is required to apply Section 28.

Instead of taxation under Sections 16 or 28, the employer and employee may, subject to certain requirements, elect for taxation under Section 7P of the Danish Tax Assessment Act. Under Section 7P, an employee is not taxed on the value of the shares, options or warrants at the time received, nor at the time of exercise, but only on any gains subsequently realized when the shares, options or warrants are sold. Any such gains are taxable as share income (see 4., above), if the following conditions are fulfilled:

(i) The employee and the company that employs him or her must agree in writing that the rules in TAA Section 7P apply. Generally, the agreement must set forth whether the consideration is shares or an option and which company is covered by the agreement. The nominal value of the shares or the shares that may be subscribed or purchased must be specified. Any conditions for the acquisition of the shares or the options and any time limits for exercising such rights must be stipulated in the agreement;

(ii) The value of the consideration may not exceed 10% of the employee's annual salary at the time the agreement is entered into. In the case of a general employee incentive program (offered to at least 80% of the employees on equal terms), the threshold is increased to 20% of the annual salary. For employees of certain small qualifying startup businesses, the threshold is increased to 50%, effective for employee share offerings made on or after January 1, 2021;

(iii) The value of the consideration must be provided by the company that employs the employee or a company in the same group (for a definition of a group company, see V.B.3.b.(3), above);

(iv) The consideration must be shares in the company or the group company or an option to subscribe or purchase shares in such a company;

(v) The shares acquired or the shares that may be acquired under the warrants or options may not belong to separate classes of shares;

(vi) Options and warrants may not be sold. The expiration of an option or a warrant or its transfer *mortis causa* is not considered a sale in this respect;

(vii) Options must contain an actual right for the employee or the company that granted the options, respectively, to acquire or deliver the shares;

(viii) Reporting to the DTA is required in connection with the agreement as well as any subsequent exercise of the warrants or options.

To fulfill the conditions identified above, it may be necessary to change an agreement concerning shares or options received as consideration for employment, change the rate at which the shares may be bought on the exercise of an option, or change the number of shares or options or the class of shares that the employee may acquire. Such changes will not be deemed as taxable events. This applies only to changes made to fulfill one of the conditions (i) through (vii) described above.

The relevant factor for determining whether condition (ii) is fulfilled (i.e., the value threshold of 10%, 20% or 50%), is generally the value of the shares, options or warrants at the time the exercise price or purchase price is firmly fixed; however, no later than at the time the employee acquires an unconditional right to the shares, options or warrants as compared to the employee's salary in the year the agreement is entered into.

If a Section 7P election is made, the company granting the shares, warrants or options cannot deduct their value for Danish corporate income tax purposes (see V.B.3.e., above).

8. Loss Carryforward and Carryback

Net losses as computed for tax purposes and including certain capital losses (to the extent a gain would have been taxable) may generally be carried forward indefinitely and set off against future taxable income. A taxpayer may not defer the set off of losses to a future year if he or she has income in the current year. It is not possible to carry back net losses.

Tax losses must be reported with an individual's income tax return, which is filed electronically.

D. Allowances, Deductions and Credits

An individual is granted a basic personal allowance (*personfradrag*) of DKK 49,700 (2024) before the calculation of the

[725] Business Tax Act, Secs. 7 and 8.

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tax on his or her ordinary income, i.e., the first DKK 49,700 of taxable income (after payment of an 8% labor market tax) is exempt from taxation. For an individual under the age of 18, the basic personal allowance is also DKK 49,700 (2024).[726]

Furthermore, an individual with employment income or business profits is also granted an employment allowance (*beskœftigelsesfradrag*) of 10.65%, capped at DKK 45,100 (2024), and a job allowance (*jobfradrag*) of 4.5% of income exceeding DKK 216,100, capped at DKK 2,800 (2024).

As a rule, salaried employees may deduct expenses incurred to acquire, secure or maintain such income from their ordinary income (but not their personal income, so that the tax value of such deductions is lower than the tax at the effective rate applicable to employment income — see X.E., below), but only to the extent those costs exceed DKK 7,000 (2024). Certain work-related expenses, such as for travel, unemployment insurance, membership fees for trade unions and professional associations, etc., are fully deductible from ordinary income (but not from personal income).[727]

Special provisions apply with regards to transportation expenses from an employee's residence to the workplace. An allowance per kilometer is granted if the total distance exceeds 24 kilometers. If the total distance is between 25 and 120 kilometers, the allowance is DKK 2.23 (2024) per kilometer is granted; if the traveling distance exceeds 120 kilometers, the allowance is DKK 1.12 (2024) per kilometer. An allowance of DKK 2.47 (2024) is granted to taxpayers living in certain remote areas if the travel distance exceeds 120 kilometers. These provisions apply irrespective of the means of transportation used. Self-employed individuals and sole traders are not subject to the limitation described above and may, therefore, claim the actual costs of transportation.

As a rule, employees may deduct contributions to life insurance policies and pension plans only from their ordinary and personal income[728] but, as of 2014, only contributions to a pension plan that are paid out as an annuity may be deducted from personal income and then only up to a certain amount, depending on the pension plan concerned.

Self-employed individuals and sole traders may deduct all business expenses, except interest, from their personal income, provided the expenses are incurred for purposes of acquiring, securing or maintaining taxable income. A special tax regime is available for sole traders under which business income is taxed at the rate of 22%. If the profits are used for personal consumption, the profits must be included in the taxpayer's ordinary income. Any taxes paid under the business scheme are set off against personal taxes. Interest expenses may be set off only against ordinary income and capital income. Alimony payments may be deducted from ordinary income.

Employees are, under certain conditions, allowed to make deposits not exceeding 60% of their net earned income in a special account for purposes of setting up a business in Denmark. Such deposits may generally be deducted from the taxpayer's taxable income (thus having a reduced tax value).

[726] PTA, Sec. 10.
[727] TAA, Sec. 9.
[728] PTA, Sec. 3.

Resident individuals in Denmark who are assigned abroad by their employers are, under certain conditions, entitled to a special standard deduction for estimated extra expenses equal to DKK 400 per week. In addition, the costs of transportation may be deducted. If the stay abroad exceeds an uninterrupted period of at least six months, apart from vacations and the like with a maximum duration of 42 days, and the individual remains subject to full taxation in Denmark, income from wages and salaries for personal work performed during the stay abroad will normally be exempt from Danish taxation.[729] However, if the provisions of a tax treaty grant Denmark the right to tax such income from wages and salaries, only half the tax relief can be obtained.

E. Calculation of Taxable Income and Tax Rates

The national Danish income tax consists of the labor market tax, the bottom-bracket state tax, and the top-bracket state tax. The total of these taxes, together with the applicable municipality tax and church tax, constitutes the total income taxes payable.

The rate of the labor market tax is 8% and the tax is generally levied on income from employment (excluding certain benefits in kind), fee income and profits from self-employment, before the deduction of allowances.

The rate of the bottom-bracket state tax remains at 12.01% for 2024. The bottom-bracket state tax is levied on personal income and positive net capital income less the basic personal allowance. The top tax-bracket state tax is levied at the rate of 15% on personal income and any positive net capital income exceeding DKK 49,700 (2024) less an allowance of DKK 588,900 (2024), i.e., the top tax threshold.[730] Any unused portion of the top tax threshold cannot be transferred to the other spouse.

In addition to the labor market tax and the bottom-bracket and top-bracket state taxes, municipality tax and church tax (if the taxpayer is a member of the Danish State Church — *Folkekirken*) are levied on net ordinary income less the applicable allowance. The rate of the municipality tax and church tax depends on the municipality in question, the country average being approximately 25.7% (2024), including church tax.

Furthermore, the marginal tax rate on personal income, excluding labor market tax and church tax (if any), may not in aggregate exceed 52.07% of the calculated personal income (2024) and the marginal tax rate on net capital income may not in aggregate exceed 42% of the calculated capital income (2024).

A special interim tax was imposed on payments received under pension plans,[731] but the tax has been abolished.

F. Taxation of Seafarers

Wages paid to seafarers are taxed in accordance with to the rules described above, subject to the beneficial provisions contained in the Act on Taxation of Seafarers.[732] The Act applies to

[729] TAA, Sec. 33A.
[730] PTA, Sec. 7.
[731] PTA, Sec. 7a.
[732] Consolidated Act No. 131 of February 7, 2020, Act on Taxation of Seafarers (*Sømandsbeskatningsloven* or STA), as amended.

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remuneration received for work on board a vessel. If the vessel is temporarily in dock due to repair work, the seafarer may still invoke the provisions of the Act if employment started prior to the beginning of the repair work and the seafarer is not employed solely to work on the ship while in dock.[733]

The Act lists certain limited sailing activities that do not qualify for beneficial tax treatment.[734] These are:

(i) Sailing or towing and rescuing business carried on by vessels that predominantly sail on Danish lakes, other waterways or rivers;

(ii) The use of vessels at the same place, such as in a harbor;

(iii) Sailing or towing and rescuing business carried on by vessels that are not equipped with their own engines;

(iv) Regular services between harbors within 50 nautical miles; and

(v) Other sailing activities or towing and rescuing business where it is possible for the seaman to return to his or her personal dwelling overnight on a regular basis.

Seafarers hired by a vessel registered with domicile in Denmark or another European Union (EU) Member State or European Economic Area (EEA) country who are not hired for the limited sailing activities described above, are (in addition to the personal allowance) entitled to a special seafarer's allowance, but lose the right to a number of ordinary deductions and allowances, such as deductions for union membership contributions and the expenses of unemployment insurance, the commuting allowance and deductions for other employment-related expenditure.

The special seafarer's allowance amounts to DKK 56,900 (this is not adjusted annually). If the gross tonnage of the vessel that hires the seaman is 500 tons or more, the allowance is DKK 105,000.[735] The allowance is also granted to seamen hired by vessels engaged in exploration for and the extraction of hydrocarbons. Further, the DKK 56,900 allowance is also granted to seamen hired on a special vessel — a "shell seeker" — digging gravel from the seabed if the gross tonnage of the vessel concerned is more than 20 tons.

Salary paid to seafarers on board a Danish vessel who are subject to full tax liability in Denmark is exempt from income taxation if the vessel is registered in the Danish International Ship (DIS) Register and the vessel is employed for a purpose falling within the scope of the Act on Taxation of Shipping Income (see V.B.11., above).

Benefits such as bonuses and severance pay are generally also exempt.[736] The exemption may also be claimed by a nonresident provided the nonresident is employed on a vessel meeting the requirements set out above. As of the income year 2020 and onwards, the exemption is also available to a seafarer working on board a foreign ship registered in another EU Member State or EEA country or sailing under the flag of another EU Member State or EEA country if the ship is employed for a purpose falling within the scope of the Act on Taxation of Shipping Income (see V.B.11., above), provided the foreign employer is approved by the DTA on application.[737] If the ship sails in regular service between harbors in EU Member States transporting passengers, the exemption provisions may only be claimed by nationals or residents of another EU Member State or EEA country.[738]

The exemption provision only applies if the parties have taken the exemption into consideration in agreeing on the salary of the seafarer concerned.

The exemption provisions are also available to an individual working on a shell seeker outside the European Union and the EEA.[739]

If the exemption provision does not apply and the seafarer is subject to limited taxation, a 30% withholding tax is imposed on the gross salary paid in addition to the 8% labor market tax.[740] A seafarer may elect to be taxed on his or her worldwide income and be entitled to the allowance of DKK 56,900 or DKK 105,000.

G. *Social Security*

1. *In General*

Mandatory Danish social security contributions generally apply to Danish employment unless the employee concerned is subject to social security in another jurisdiction.

The employer and the employee are liable to pay contributions to the Danish Labor Market Supplementary Pension (*Arbejdsmarkedets Tillægspension* or ATP). ATP contributions amount to approximately DKK 3,564 per year (2024) per full-time employee and are paid two-thirds by the employer and one-third by the employee.

In addition to ATP, an employer is generally liable to pay contributions to the Danish Labor Market Insurance (*Arbejdsmarkedets Erhvervssikring* or AES) scheme, the Danish maternity scheme, the Employer's Reimbursement System (*Arbejdsgivernes Uddannelsesbidrag* or AUB) the Labor Market Fund for Posted Workers (*Arbejdsmarkedets Fond for Udstationerede* or AFU), the Financing Contribution (*Finansieringsbidrag* or FIB), and an administrative contribution to the Employee Vacation Fund. For a full time employee: the AES contribution is between DKK 211 to DKK 8,425 per year depending on the industry sector (2024);[741] the maternity contribution, DKK 1,350 per year (2024);[742] the AUB and AFU contributions, DKK 3,149 per year (2024)[743] and the FIB, DKK 437 per year (2024).[744] The administrative contribution to the Employee Vacation Fund is DKK 9.50 (2024) per full-time employee for each time the employer pays an amount that corresponds to a full year of ATP contributions.[745]

[733] STA, Sec. 1.2.
[734] STA, Sec. 2.1.3.
[735] STA, Sec. 3.1.
[736] STA, Sec. 5.
[737] STA, Sec. 5b.
[738] STA, Sec. 7.
[739] STA, Sec. 8.
[740] STA, Sec. 9.
[741] AES contribution.
[742] Maternity contribution.
[743] AUB contribution — AFU contribution.
[744] FIB contribution.
[745] Executive order No. 1469 of December 1, 2022.

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2. Chargeable Persons

Employees receiving salaries for personal services performed in Denmark or performed for a Danish employer abroad are subject to the social security contributions.

Apart from Danish domestic law, the EU Regulation on coordination of the social security system,[746] the Nordic Social Convention and other social conventions may be invoked. Under the EU Regulation, a foreign employee from an EU Member State on secondment in Denmark may, on application, continue to pay social security contributions to his or her home country to the extent that his or her stay in Denmark does not exceed 24 months and that he or she is not sent to replace another posted person. If the stay in Denmark is between 24 and 36 months, the Danish social security authorities may, on application, grant an exemption from the 24-month requirement. In these circumstances, no Danish social security contributions have to be paid. Special conflict of laws rules apply to persons pursuing activities in two or more EU Member States.

3. Collection

The employee's ATP contribution is withheld by the employer at payroll processing and paid together with the income tax withheld on salaries. The employer's social contributions are generally reported and collected on a quarterly basis.

H. Assessment and Filing

The basis of assessment is the taxable income and capital gains of the income year.

Income and expenses are generally recognized on an accrual basis. This means that income is generally taxable in the income year in which an individual becomes entitled to it (although this criterion itself may be unclear) even if the actual payment of the income is deferred.

Provisional income tax and the labor market tax are paid based on estimated income for the income year. The provisional tax is generally based on the final tax assessment notice (*årsopgørelse*) for the previous income year, adjusted in accordance with the general rise in prices and wages. To avoid paying any outstanding tax the following year, a taxpayer may adjust the preliminary income assessment notice (*forskudsopgørelse*) to be used by the administration to compute the provisional tax.

Income from employment and certain other kinds of comparable income, for example, directors' remuneration, are treated as "A-income" (*A-indkomst*). This means that such income is subject to a pay-as-you go regime under which a Danish employer or a foreign employer with a permanent establishment (PE) in Denmark must withhold and pay taxes on a preliminary basis (*A-skat*) with respect to salaries paid to Danish employees. The withholding tax rate to be used by the employer is supplied by the DTA based on the employee's preliminary income assessment. Provisional tax on income other than A-income, for example, income from self-employment ("B-income"), is collected in 10 equal installments paid by the taxpayer during the fiscal year based on the preliminary income assessment.

An individual receiving a tax return form (*oplysningsskema*) must file the return at the latest by July 1 of the year following the income year. This is typically the deadline for individual traders and other small businesses. Other individuals who only receive annual tax assessment notices prepared by the DTA based on electronic reporting from employers, unions, bank mortgage associations, etc., must file any changes at the latest by May 1 of the year following the income year.[747] All filing is made electronically.

If the provisional tax paid exceeds the final calculated tax, the excess is refunded to the taxpayer together with a tax-free interest supplement, but the rate of the supplement is 0.8% (2023).[748] An underpayment of tax is increased by a non-deductible surcharge of 7.5% if paid after July 1, 2023. If paid before that date, interest accumulates on a daily basis at the rate of 5.5% (2024).[749] If the reason for the underpaid tax is due to an individual not informing the DTA of his or her income in a timely fashion, interest will be payable from September 1 in the year following the tax year in question and until the final tax assessment has been issued.[750] The penalty for late filing may not exceed DKK 2,500.[751]

I. Audits and Limitations Period for Assessment and Collection

For a discussion of the audit process and assessment method, see V.B.9., above.

[746] Regulation (EC) No. 883/2004 of the European Parliament and the Council of April 29, 2004, on the coordination of social security systems.

[747] TCA, Secs. 8 and 10.

[748] TSA, Sec. 62; *Rentesatserne til beregning af dag-til-dag-rente mv.* for 2023.

[749] TSA, Sec. 61; *Rentesatserne til beregning af dag-til-dag-rente mv.* for 2023.

[750] TSA, Sec. 61(2). The rule applies to final tax assessments issued after December 15, 2023, meaning that the interest will, in most cases, apply to underpaid tax for 2023 if the reason for the underpaid tax is that the taxpayer did not inform the DTA in a timely fashion of his or her income. Interest rates for 2023 will be published later on.

[751] TCA, Sec. 73.

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XI. Taxation of Nonresident Individuals

A. *Scope of Taxation*

Nonresident individuals not subject to full tax liability are subject to limited tax liability, i.e., they are taxable only on income received from specific Danish sources, the essential sources being:[752]

(i) Remuneration for personal services performed in Denmark in the context of an employment relationship if the remuneration is paid by an employer resident in Denmark or a foreign employer with a permanent establishment (PE) in Denmark, or the remuneration is paid to an individual staying in Denmark for one or more periods that exceed in total 183 days within a 12-month period. The tax liability arises irrespective of the kind of consideration and whether the right to the consideration is vested after the services have been performed in Denmark. Remuneration for personal services performed on board vessels or airplanes registered in Denmark is also included.[753] A vessel or airplane registered in a foreign country is deemed to be registered in Denmark if it is bareboat chartered by a Danish shipping company.

(ii) Remuneration paid by a Danish resident company to a director or a member of a committee, commission, council or the like (regardless of whether the meetings are held or the services performed in Denmark).

(iii) Remuneration paid to an employee of a foreign enterprise hired-out to a Danish enterprise. The international hiring-out of labor provisions apply if the services rendered are performed in Denmark and form an integral part of the Danish enterprise.

(iv) Income from business or professional services supplied in Denmark through a PE and income from participating in, or otherwise determined as a share of the profits of, such business activities.

(v) Income from real property situated in Denmark.

(vi) Dividends derived from a Danish registered company.

(vii) Consultancy fees that are not encompassed by (ii) if the consultant has been a resident of Denmark for tax purposes and is, or at any time within the last five years prior to the termination of his or her full tax liability was, directly or indirectly involved in the management or control of the Danish company paying the fees.

(viii) Certain royalties.

(ix) Certain pensions and annuities paid by a Danish employer or a Danish insurance company.

(x) Certain social benefits and welfare payments paid by various public bodies in Denmark.

[752] TSA, Sec. 2.
[753] TSA, Sec. 2.2.

B. *Personal Income*

1. *In General*

Remuneration received by a nonresident employee is subject to tax in Denmark if the duties of the employment are performed in Denmark and an employer resident in Denmark pays the remuneration. A Danish PE of a foreign business entity is deemed to be resident in Denmark for this purpose.

Individuals not otherwise subject to Danish taxation who, on a hiring-out of labor basis, receive income for work carried out in Denmark, are subject to Danish tax on such income. Similarly, individuals participating in oil and gas exploration activities in Denmark, including offshore activities, who are not otherwise liable to Danish taxation are also subject to Danish tax on such income (see IV.J., above). In these two cases, the tax is levied at source at a flat 30% rate on gross income in addition to the 8% labor market tax, whether paid in cash or in kind, and the withholding constitutes the final payment of tax.

2. *Foreign Researchers and Key Employees*

a. *In General*

Denmark has a special expat tax regime for foreigners who move to Denmark to work as researchers or highly-paid employees. Subject to certain conditions, this regime allows for a considerably lower tax rate on earned income.

Under the expat tax regime, an approved foreign researcher or a highly-paid employee, who has been recruited abroad, may for a limited period elect to pay income tax on their gross A-income (without any deductions) at a flat rate of 27%. With the addition of the labor market contributions, the effective tax rate is 32.84% under this scheme. From a local Danish point of view, the 27% flat rate tax is generally regarded as attractive in comparison with the ordinary marginal tax rate on personal income of approximately 56% (2024).

Section 48E and 48F of the Tax at Source Act lists a number of conditions that must be met before the expat tax regime can be applied and the flat rate taxation thus elected.

b. *Requirements*

(1) *Application*

A researcher who wants to apply the expat tax regime must first have his or her qualifications approved by a public research institution or the Independent Research Fund Denmark (*Danmarks Frie Forskningsråd*) and must engage in research activity. Further, the employer must submit a special request form for the registration of the conditions of employment of the approved researcher and the election to be taxed under the expat tax regime (Form no. 01.012 A).

If a highly-paid employee wants to apply the expat tax regime, a minimum salary requirement must also be met and the sponsoring employer must submit a special request form to the Danish Tax Agency (*Skattestyrelsen* — DTA) to register the employment conditions of the employee and the election to be taxed under the regime (Form no. 01.012 B, see Worksheet 4). The form must be submitted by the employer within eight days of having paid the first salary to the employee.

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When filing an application to apply the Danish expat regime, the tax authority will assess whether the requirements are met and pre-register the employee on the Danish expat tax regime with retrospective effect from the employment commencement date.

(2) Tax Liability Upon Commencement of Work

Taxation under Section 48E of the Tax at Source Act is an option available to an individual who becomes subject to full tax liability in Denmark (on his or her worldwide income) or subject to limited tax liability in Denmark (on salary received for personal services rendered in Denmark)[754] in connection with the commencement of work for an employer subject to Danish taxation. The option is, thus, not available to an expatriate stationed in Denmark by a foreign employer, unless the foreign employer has a PE in Denmark for tax purposes and the employee is employed by the PE. Nor is the option available to an employee subject to full Danish tax liability who renders personal services outside Denmark in such circumstances that the income is taxable in the foreign country concerned under the applicable tax treaty for a period of more than 30 working days within a 12-month period.

Full tax liability in Denmark is triggered when a foreign individual acquires a residence in Denmark and actually takes up residence in Denmark. The individual may move to Denmark and start his or her stay in Denmark up to one month prior to the commencement of the employment. Further, a stay in Denmark of more than six consecutive months is sufficient to make an individual fully taxable.

An election to be taxed under Section 48E of the Tax at Source Act must be made when an employee begins work, provided the conditions for taxation under Section 48E were met when the employee took up his or her position in Denmark.

As a consequence of an expatriate becoming fully taxable on his or her worldwide income, other types of income that the expatriate may receive, such as interest, dividends, royalties and other salary, are taxed in Denmark in accordance with the ordinary provisions. However, such other income may not be comprised by the taxation under the expat tax regime, and no special relief or exemption will be granted.

(3) Pre-existing Tax Liability

To qualify for the expat tax regime, at any time during the 10-year period preceding the time of employment, an expatriate may not have been taxable in Denmark on his or her worldwide income or on remuneration for personal services performed in Denmark, nor have received income from a PE the expatriate had in Denmark.[755]

An approved researcher is deemed to meet this 10-year requirement even if he or she has been subject to limited tax liability in Denmark on income earned as a guest teacher (for a total period not to exceed 12 months). Furthermore, an individual becoming taxable in Denmark will be deemed to meet the 10-year requirement even if he or she has been taxable in Denmark within the 10-year period, provided the previous stays were related to work at a Danish university or research institution and were exclusively financed by sources outside Denmark.[756]

(4) Participation in Company Management and Equity

A taxpayer subject to the expat regime may not (directly or indirectly) have, or have had at any time during the five years preceding the time of employment, a part in the management control or ownership of the share capital of the company with which the service agreement is concluded.

The control condition will be deemed fulfilled if the employee owns or has owned more than 25% of the share capital or controls or has controlled more than 50% of the votes in the company. Holdings of certain relatives must be taken into consideration in calculating whether the test is met. The threshold must not be exceeded at any time before the election to be taxed under Section 48E of the Tax at Source Act is made or at any time while income is taxed at the flat rate of 27%.

(5) Base Salary

An employee must receive an average gross monthly salary of at least DKK 75,100 (2024), before deduction of taxes, the 8% labor market tax, and any foreign social security contributions, but after deduction of the ATP.[757] This figure is adjusted annually in accordance with inflation (the minimum salary requirement does not apply to an approved researcher).[758] The amount also comprises the value of certain benefits in kind, in particular, a company car and free telephone.

c. Scope

The taxable basis under the expat tax regime is the monetary remuneration set out in the employment or services agreement.[759] Salary, holiday payments, fees, profit sharing and bonuses paid under a services agreement are considered monetary remuneration. Items such as free lodging and share incentive salary are subject to taxation under the ordinary provisions. This also applies to any fees received as a board member.

Neither social security payments paid in Denmark nor mandatory foreign contributions[760] are taken into consideration in calculating the 27% tax.

Contributions to pension schemes with Danish pension funds are excluded in calculating the 27% tax. Contributions to pension schemes with foreign pension funds are considered monetary remuneration and as such taxable unless relief can be claimed under the applicable tax treaty. Such relief can be claimed under the Denmark-Netherlands,[761] Denmark-Switzerland[762] and Denmark-United Kingdom[763] tax treaties.

[754] TSA, Sec. 1, Nos. 1 and 2.

[755] TSA, Sec. 48E.3.1-3.

[756] TSA, Sec. 48E.5.

[757] TSA, Sec. 48E.3.3.

[758] TSA, Sec. 48E.4.

[759] TSA, Sec. 48F.1.

[760] TSA, Sec. 48F.3.

[761] Convention between the Kingdom of The Netherlands and the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed on July 1, 1996.

[762] Convention between the Swiss Confederation and the Kingdom of Denmark for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, signed on November 23, 1973.

[763] Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark

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The tax is imposed at a flat rate of 27%. The tax is a gross tax as no deductions or allowances are available. Any other income subject to Danish taxation, which may not be covered by the expat tax scheme, is calculated in accordance with the ordinary provisions and all available deductions and allowances may be claimed for this purpose.

d. Duration

The reduced tax rate under Section 48E of the Tax at Source Act is only available for up to seven years (84 months) within any period from the time of commencement of the first services agreement.

If the position of the taxpayer is terminated and the taxpayer is employed within a month of termination, the condition concerning becoming taxable in Denmark does not apply and the condition concerning not having been taxable in Denmark during the last 10 years prior to commencement of the employment is waived.[764]

A taxpayer who gives up his or her residence in Denmark and thus terminates his or her Danish tax liability may return to Denmark. The period during which the taxpayer is taxed under Section 48E of the Tax at Source Act is not taken into consideration for purposes of calculating the 10-year period during which the taxpayer's tax liability must have been terminated in order to invoke the favorable 27% taxation rate.

e. Clawback Provisions

No clawback provisions apply if a stay exceeds 84 months.

C. Business Income

Individuals carrying on or taking part in a business deemed to be carried on through a PE in Denmark, or sharing in the profit of such a business, are subject to Danish tax on income derived from such activities. The term "permanent establishment" is generally interpreted in accordance with Article 5 of the OECD Model Convention, except in relation to building sites and distance sales. (See VI.B., above.)

An individual's taxable share of the profits of a PE is based on the individual's *pro rata* share of the net profits of the PE. Fixed interest income or any other amount bearing no relation to the operating surplus of the PE is not taxable in the individual's hands.

Royalties, licenses, fees and similar payments are subject to tax to the extent they are calculated as a share of the profits of a PE in Denmark.

D. Investment Income

Nonresidents receiving income from real property situated in Denmark or dividends from Danish companies, including tax credits on such dividends if granted under a tax treaty, are subject to Danish tax on such income. Income from real property for these purposes comprises any real property income, including rental under a real property lease.

Dividends from Danish companies are subject to a 27% withholding tax. A reduced rate of 15% may apply to a resident of the European Union/European Economic Area (EEA) or a tax treaty jurisdiction, provided the recipient holds less than 10% of the share capital of the company distributing the dividends.

Withholding tax is imposed on royalties at the rate of 22%.

Interest from Danish sources is not subject to taxation unless the interest is connected with a PE or the relevant debt qualifies as controlled debt. In such cases, a withholding tax of 22% is imposed.

For nonresidents, the withholding tax on dividends, royalties, and interest constitutes a final tax. No reduction for losses from other sources is available.

E. Capital Gains

Nonresident individuals subject to limited taxation in Denmark are taxed only on capital gains realized on the sale of assets relating to a PE in Denmark or on the sale of real property situated in Denmark.

See V.B.3.b., above, and X.C.5., above, for details on the capital gains taxation rules, which also apply to nonresident individuals.

F. Allowances

Nonresident individuals are generally entitled to the same allowances as residents, except for the personal allowance granted to residents. However, the personal allowance is granted to nonresidents receiving fees, salaries for services performed in Denmark, pensions and social security payments.

G. Calculation of Taxable Income

As a rule, ordinary income is calculated on a net basis, subject to the exceptions described at X.D. and E, above.

Individuals subject to limited taxation on directors' fees, salaries, profits from a PE and income from real property must file tax returns electronically showing their taxable income for the year.

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for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed on November 11, 1980.

[764] TSA, Sec. 48F.2.

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XII. Transfer Pricing

A. *Scope of Provision*

The purpose of the Danish transfer pricing provisions is to:

(i) Impose an additional obligation to provide information;

(ii) Make it clear that taxpayers must demonstrate how intercompany prices are fixed; and

(iii) Extend the period during which the Danish Tax Agency (*Skattestyrelsen* — DTA) may adjust taxable income and apply the consequences of an adjustment of intercompany prices.

The Danish provisions concerning the arm's-length principle are to be construed in accordance with the transfer pricing guidelines of the Organisation for Economic Cooperation and Development (OECD).

It should be noted that the provisions apply not only to transactions between a Danish company and its foreign parent, but also to transactions between two or more Danish companies. However, transactions between Danish companies are not subject to Danish transfer pricing documentation requirements, as discussed under XII.B, below.

The provisions[765] apply to "controlled transactions," meaning transactions between the following persons:

(i) A taxable person and an individual or legal person that controls the taxable person;

(ii) A taxable person and a legal person controlled by the taxable person;

(iii) A taxable person and a legal person that is related to the taxable person;

(iv) A taxable person and that person's permanent establishment (PE) abroad;

(v) A foreign individual or legal taxable person and that person's Danish PE; or

(vi) A foreign individual or legal taxable person and that person's associated hydrocarbon business covered under Section 21.1 or .4 of the Hydrocarbon Tax Act.

For purposes of this provision, a taxpayer is deemed to control another entity if the taxpayer, directly or indirectly, owns more than 50% of the share capital or, directly or indirectly, controls more than 50% of the votes in the controlled entity.[766] A taxpayer is deemed to be foreign if the taxpayer is deemed to be a resident of a foreign country under the terms of a tax treaty. A company is deemed to be a member of a group of companies if the same group of shareholders can exercise control over the companies concerned.[767]

B. *Documentation Requirements*

Taxpayers are required to inform the DTA of the nature and extent of "controlled transactions" on their tax returns. Further, taxpayers must prepare and maintain written documentation concerning the terms and conditions with respect to controlled transactions. According to Act No. 2194 of November 30, 2021, effective from tax years commencing on or after January 1, 2021, taxpayers are only required to prepare transfer pricing documentation where:

(i) One of the parties to the controlled transaction is a foreign natural or legal person, or a PE in the Faroe Islands, Greenland or a foreign country (including as determined in accordance with an applicable tax treaty). No written documentation need be prepared if all parties to the controlled transaction are PEs in Denmark of a corporation resident in the Faroe Islands, Greenland or a foreign country (including as determined in accordance with an applicable double tax treaty) or main offices of a corporation resident in Denmark.

(ii) One of the parties to the controlled transaction is taxed under the Act on Taxation of Shipping Business, unless all parties to the controlled transaction are taxed under the Act on Taxation of Shipping Business. Written documentation must also be prepared if the taxpayer computes income covered under Section 13.2 of the Act on Taxation of Shipping Business.

(iii) One of the parties to the controlled transaction is taxed under the Act on Hydrocarbon Taxation, unless all parties to the controlled transaction are taxed under the Act on Hydrocarbon Taxation.

(iv) One of the parties to the controlled transaction is covered by Corporate Tax Act, Section 1.1.3, unless all parties to the controlled transaction are covered by that Section.

(v) One of the parties to the controlled transaction is covered by Corporate Tax Act, Section 1.1.6.

(vi) One of the parties to the controlled transaction is covered by Corporate Tax Act, Section 3.

(vii) If the taxable income will be calculated in accordance with Tax at Source Act, Section 2.8, Corporate Tax Act, Section 2.7, or Corporate Tax Act, Section 8.6.

This generally means that transfer pricing documentation is mainly required to be prepared in respect of cross-border controlled transactions, i.e., controlled transactions between one or more Danish taxable persons and one or more persons taxable abroad, whereas controlled transactions between Danish taxable persons are generally not subject to Danish transfer pricing documentation requirements.

The statutory transfer pricing documentation must be prepared on a continuous basis throughout the year. Effective from tax years commencing on or after January 1, 2021, the transfer pricing documentation must be submitted to the DTA no later than 60 days following the filing deadline for the tax return for the relevant year. Benchmark reports, such as a database investigation, need only be prepared if requested by the DTA.[768] The taxpayer is granted a period of at least 60 days for preparing such an investigation.[769]

[765] TCA, Sec. 37.6.
[766] TCA, Sec. 37.1.
[767] TCA, Sec. 37.2.
[768] TCA, Sec. 39.3.
[769] TCA, Sec. 39.4.

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The transfer pricing documentation must consist of: (i) a master file containing basic information relevant for all group entities: (ii) a local file containing specific information on the Danish entities: and (iii) a country-by-country (CbC) report containing information on the allocation of the group's global income and taxes. The DTA may require that the CbC report be submitted to them each year if the annual worldwide turnover of the group exceeds DKK 5.6 billion.

A taxpayer that, alone or together with companies that are members of the same group, has less than 250 employees and either: (i) a yearly balance of less than DKK 125 million: or (ii) a yearly turnover of less than DKK 250 million is only required to prepare and maintain written documentation for terms and conditions and prices concerning:

(i) Controlled transactions with individuals or legal entities resident in a country with which Denmark has not concluded a tax treaty and that is not a European Union (EU) Member State or a European Economic Area (EEA) country;

(ii) Controlled transactions with a PE in a country with which Denmark has not concluded a tax treaty and that is not an EU Member State or an EEA country; and

(iii) Controlled transactions with a PE in Denmark of a taxpayer that is a resident of a country with which Denmark has not concluded a tax treaty and that is not an EU Member State or an EEA country.[770]

If a taxpayer fails to prepare and submit (sufficient) transfer pricing documentation within the statutory deadline (i.e., 60 days following the deadline for submission of the tax return), the DTA may estimate the taxpayer's income on a discretionary basis in accordance with the arm's length principle.[771]

On this point, in a ruling rendered on April 26, 2021, the Danish Supreme Court held that a Danish group's transfer pricing documentation was insufficient (so that the DTA had legal basis for a discretionary estimation of the taxable income) because the chosen transfer pricing method for a controlled transaction was based solely on a "commercial judgment" made by the group's management without taking into account the markup that would have been applied in comparable transactions between independent parties.[772]

C. Adjustments

The statutory deadline for the DTA to carry out transfer pricing adjustments is the sixth year following the tax year concerned at the latest (ordinary adjustments).[773]

However, the DTA may, in certain cases, carry out an extraordinary adjustment, even after the expiration of the deadline for making an ordinary adjustment, for example, if a foreign tax authority has adopted a decision of relevance for the taxpayer or the DTA has assessed the taxpayer on an incorrect or incomplete basis. The taxpayer may also request that an extraordinary assessment be made by the DTA on the same basis.[774]

[770] TCA, Sec. 40.
[771] TCA, Sec. 46.
[772] SKM.2021.251.HR.
[773] TA, Sec. 26.5.
[774] TA, Sec. 27.

Taxpayers may challenge decisions of the DTA either by way of the administrative appeal system (and ultimately before the courts) or through the mutual agreement procedure (MAP) provided for in most tax treaties entered into by Denmark.

D. Penalties and Fines

A company that fails to report in its income tax return that it is subject to the transfer pricing documentation requirements may be subject to a fine. The fine may be set based on either: (i) the company's annual turnover; or (ii) the number of employees; however, the fine will always be set at a base level of DKK 250,000. The fine may be increased by up to 50% if the inaccurate report is deemed to be part of a systematic violation of the tax legislation.

A fine based on the annual turnover may be set at 0.5% of the turnover if the turnover is up to DKK 500 million, 0.1% of the turnover if the turnover is between DKK 500 million and DKK 1 billion, and 0.05% of the turnover if the turnover exceeds DKK 1 billion.

A fine based on the number of employees may be set at DKK 250,000 for every 50 employees. If the number of employees exceeds 500, the fine may be set at DKK 2 million.

Also, fines of a minimum of DKK 250,000 may apply for failure to prepare and submit transfer pricing documentation within the time limit of 60 days following the deadline for submission of the tax return.[775]

Moreover, a fine of 10% of the corresponding increase in taxable income resulting from a transfer pricing adjustment may be applied.

E. Competent Authority

The Danish Competent Authority (*den Danske Kompentente Myndighed for udveksling af oplysninger*) aims to ensure the proper implementation of tax treaties and to resolve disputes between taxpayers and tax authorities through mutual agreement procedures, facilitating the exchange of tax-related information, and providing assistance in the collection of taxes as outlined in Articles 25, 26, and 27 of the OECD Model Convention.[776]

The Danish Competent Authority is responsible for handling cases where a taxpayer believes that the actions of one or both of the contracting states result in taxation which is not in accordance with the provisions of the tax treaty and is thus responsible for engaging in negotiations and discussions with the competent authority of the other country. This "Mutual Agreement Procedure" (MAP) under Article 25 of the OECD Model Convention lies with the Danish tax authorities, "*Store Selskaber — Kompetent Myndighed*" if the case is subject to Article 7 or Article 8 of the OECD Model Convention.[777] For other cas-

[775] TCA, Sec. 84.1.5.
[776] Danish Tax Agency (DTA) Legal Guide (*Den juridiske vejledning*) 2024-2, section C.F.8.2.2.3.1.2.
[777] Skattestyrelsen Store Selskaber — Kompetent Myndighed Copenhagen Towers 1, Hannemanns Allé 25, 2300 København S; email: store-selskaber-sikker-postsktst.dk. For further, see thr SKAT *Legal Guide: Mutual Agreement Procedure*, https://info.skat.dk/data.aspx?oid=16287.

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es, the Danish tax authorities "*Jura — Kompetent Myndighed*" must be contacted.[778]

The Danish Competent Authority is also responsible for exchanging information, under Article 26 of the OECD Model Convention, with other countries' competent authorities when requested for the purposes of tax administration and enforcement. This exchange typically involves sharing information about taxpayers' financial affairs, transactions, or activities that may be relevant for the tax assessment. The competent authority in this regard is the Danish tax authorities, *Person Udland 5 — Kompetent Myndighed*.[779] However, for automatic exchange of information, the relevant competent authority is the Danish tax authorities *"Person PU International dataudveksling — Kompentent Myndighed"*.[780]

The competent authority in connection with the collection of taxes, subject to Article 27 of the OECD Model Convention, is the Danish Debt Collection Agency (*Gældsstyrelsen).*[781]

The Danish Competent Authority must ensure that the information it has exchanged is used for legitimate tax purposes and that it complies with the confidentiality and privacy rules outlined in the applicable tax treaty and domestic laws.

For further discussion of the functions and procedures of the Danish Competent Authority, see also Chapter 45 of T.M. 6887: *Income Tax Treaties: Competent Authority Functions and Procedures of Selected Countries (D–G).*

[778] Jura — Kompetent Myndighed, Copenhagen Towers 1, Hannemanns Allé 25, 2300 København S.; e-mail: HovedpostkasseJura@SKTST.dk.

[779] Jura — Kompetent Myndighed, Copenhagen Towers 1, Hannemanns Allé 25, 2300 København S.; e-mail: HovedpostkasseJura@SKTST.dk.

[780] Skattestyrelsen, Person PU International dataudveksling — Kompetent Myndighed, Toldbodgade 3, 8900 Randers.

[781] Gældsstyrelsen, International Inddrivelse, Pionér Allé 1, 6270 Tønder.

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XIII. Avoidance of Double Taxation

A. *Tax and Exchange of Information Treaties*

1. *In General*

Denmark has concluded comprehensive tax treaties, based largely on the Organisation for Economic Cooperation and Development (OECD) Model Convention, with over 60 countries.

Further, Denmark has, alongside a larger number of other jurisdictions, ratified the OECD/G20 Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI expands the permanent establishment (PE) definition, implements measures against hybrid mismatches, and includes measures to make mutual agreement procedures (including arbitration) more effective by altering relevant provisions in the double taxation agreements in force between Denmark and other tax treaty jurisdictions that have also ratified the MLI. For further discussion on the MLI, see XIII.A.5., below.

For a complete list of Denmark's tax treaties and other tax-related agreements, see International Tax Treaties.

2. *Creation of Income Tax Treaty Relationships*

Denmark's tax treaties are largely based on the version of the OECD Model Convention which would have been published prior to the conclusion of the double taxation agreement in question; however, often with certain specific deviations (e.g., the treatment of the taxation of pensions).

Negotiations are conducted by government officials from a special division within the Danish Ministry of Taxation. After they have concluded their negotiations, the agreement must be politically approved in each country (in Denmark normally by the Minister for Taxation), after which the Danish Parliament must adopt a law authorizing the Danish government to accede to the double taxation agreement in question. The explanatory notes to the law will normally contain discussions on how the double taxation agreement in question deviates from the OECD Model Convention.

When the agreement has been acceded to by the Danish government, diplomatic accession notes must then be exchanged between the two countries.

New tax treaties will normally enter into force on the date when the last accession note has been exchanged with the other country, and the agreements will normally become effective on January 1 of the following year.

3. *Administrative Measures Dealing with Tax Treaty Provisions*

The DTA's Legal Guide (*Den Juridiske Vejledning*) contains guidance on how the articles of each double taxation agreement to which Denmark is a party should be interpreted, including discussions on any deviations from the OECD Model Convention.[782]

It also contains a section addressing each article of the OECD Model Convention based, i.a., on the latest edition of the OECD Model Convention and its commentary.[783]

[782] DTA Legal Guide (*Den juridiske vejledning*) 2024-2, section C.F.9.

The relevant Danish Competent Authority, under article 25 of the OECD Model Convention in respect of the Mutual Agreement Procedure (MAP) or the Mutual Agreement on Interpretation, depends on the OECD Model Convention article concerned, as follows:

(i) Article 7 and 9 in the OECD Model Convention (transfer pricing): Skattestyrelsen, Store Selskaber — Kompetent Myndighed, Copenhagen Towers 1, Hannemanns Allé 25, 2300 København S.

(ii) Other matters: Skattestyrelsen, Jura — Kompetent Myndighed, Copenhagen Towers 1, Hannemanns Allé 25, 2300 København S.

4. *Treaty Interpretation*

Denmark generally interprets its double taxation agreements in accordance with the principles set out in the OECD Model Convention and its commentary, to the extent that a specific reservation to or deviation from the model has not been made in the agreement. If a double taxation agreement deviates from the OECD Model Convention, interpretative aid can be found in the explanatory notes to the law adopting and implementing the double taxation agreement in question.

The OECD Model Convention and the commentary are not adopted into Danish law and, therefore, they do not have the same legal status or authority as law, unlike the double taxation agreements which are binding for Denmark as international law.

The OECD Model Convention and the commentary are generally only binding to the DTA and the Danish Competent Authority to the extent that they reflect an actual interpretative aid to the articles of the double taxation agreement in question. However, they are never binding to the Danish courts or the Danish administrative tax appeals bodies (e.g., the Danish Tax Court).

Double taxation agreements will generally be interpreted by the DTA in accordance with the OECD Model Convention version and accompanying commentary on which the double taxation agreement is based, e.g., interpretation of a double taxation agreement negotiated and concluded during 2018 would be based upon the 2017 OECD Model Convention. Amendments to a double taxation agreement negotiated after the release of a newer version of the OECD Model Convention will generally be interpreted in accordance with the newer version in respect of the articles which have been amended.

The official languages in Denmark's double taxation agreements are English, Danish and the language of the other party to the tax treaty. Where an agreement has more than one official language, it is often agreed that English is the prevailing language in the event of divergent interpretations between the Danish text and the text in the other party's language.

5. *Multilateral Instrument*

The Multilateral Instrument (MLI)[784] was implemented into Danish law by Act No. 327 of March 30, 2019, concerning

[783] DTA Legal Guide (*Den juridiske vejledning*) 2024-2, section C.F.8.2.

[784] https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf.

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the application of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The MLI entered into force in Denmark on January 1, 2020, and it applies to all Denmark's covered double taxation agreements once the respective counterparties have ratified it.

Denmark's key reservations to the MLI are:[785]

(i) Denmark applies the credit method for the elimination of double taxation as opposed to the exemption method (option C of MLI Article 5(6));

(ii) Denmark accepts to apply a simplified Limitation of Benefits test for countering treaty abuse if the counterparty has elected this test as well, although Denmark considers the general Principal Purpose Test to be sufficient for countering treaty abuse (the option set out in MLI Article 7(a));

(iii) Denmark has elected that it is a condition to be subject to the specific activity exemptions for the purpose of permanent establishment status that the overall activity of the fixed place of business is of a preparatory or auxiliary character (option A of MLI Article 11(1));

(iv) Denmark has elected that Part VI of the MLI (Arbitration) shall not apply to its covered double taxation agreements entered into with EU member states, and that the arbitration procedure shall not apply in cases where a party has imposed sanctions on natural or legal persons in respect of tax fraud (option under MLI Article 28(2)(a)).

6. Tax Concepts for Business and Investment Income

a. Taxation of Business Income

(1) Permanent Establishment

Under the OECD Model Convention, a PE is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried on and includes, *inter alia*, a place of management, a branch, an office, a factory, a workshop, any place of extraction of natural resources, and a construction site lasting for more than 12 months. An agent that habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by a foreign corporation, may also be a sufficient basis for considering that a PE exists for the foreign corporation.

Under the Tax at Source Act, a foreign enterprise may be deemed to have a PE in Denmark if it has a construction site in Denmark from day one, i.e., without regard to the duration of the work. Where a tax treaty applies, whether this right to tax under domestic law may be enforced depends on the wording of the relevant treaty.

For further discussion of the PE concept, see VI.B.2., above.

(2) Industrial or Commercial Profits

If the activities of a foreign enterprise in Denmark fall within the definition of a PE and Denmark has the right to tax the profits from those activities under the terms of a tax treaty, the foreign enterprise will be subject to Danish taxation on any profit effectively connected to the PE. Any interest or royalties received in connection with the PE are, thus, subject to taxation under a force of attraction rule.

b. Investment Income

Dividends, interest and royalty payments are generally considered to be investment income. Under Danish domestic law, withholding tax may be imposed on dividends, interest and royalties paid to a nonresident beneficiary.

7. Exchange of Information

Under most of its tax treaties, Denmark is required to exchange such information as may be required by the treaty partner country. The exchange of information not only encompasses information that may be relevant to the tax concerned but also the respective country's domestic law.

Generally, Denmark is not required to provide any information that would disclose any trade, business, industrial, commercial or professional secret.

On July 16, 1992, Denmark signed the Convention on Mutual Administrative Assistance in Tax Matters. The convention came into force on April 1, 1995. An updated list of countries participating in the Convention is available on the OECD website.[786]

On November 19, 2012, an agreement between the governments of the United States and of Denmark was entered into to improve international tax compliance and implement the Foreign Account Tax Compliance Act (FATCA). On October 29, 2014, Denmark signed the agreement concerning the OECD's Common Reporting Standard (CRS) for Automatic Exchange of Financial Account Information.

Denmark has also implemented Council Directive 2011/16/EU of February 15, 2011, on administrative cooperation in the field of taxation (DAC 1), as well as the later amendments thereto by:

- Council Directive 2014/107/EU on automatic exchange of financial accounts (DAC 2);
- Council Directive 2015/23767EY on automatic exchange of advance cross-border rulings and pricing agreements (DAC 3);
- Council Directive 2016/811/EU on automatic exchange of Country-by-Country reports (DAC 4);
- Council Directive 2016/2258/EU on access to Anti-Money-Laundering information by tax authorities;
- Council Directive 2018/822/EU on automatic exchange of information in relation to reportable cross-border arrangements (DAC 6); and

[785] For a full list of the reservations and notifications made by Denmark, please refer to the following list published by the OECD: http://www.oecd.org/tax/treaties/beps-mli-position-denmark-consolidated.pdf.

[786] See at: http://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf.

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• Council Directive 2021/514/EU on reporting obligations for operators of digital platforms (DAC 7).

a. DAC 6

The Danish legislation[787] and executive order[788] implementing DAC 6 are closely aligned with the DAC 6 Directive and include the following key elements:

i) They apply to all taxes, including stamp duty, payroll duty and vehicle registration, but excludVAT, customs duties, exercise duties and social security contributions;

ii) They only apply to cross-border arrangements (i.e., domestic transactions are not reportable);

iii) The description of the hallmarks, the main benefit test and the definition of an intermediary in the Danish implementation follow the DAC 6 Directive;

iv) A lawyer acting as an intermediary is subject to secrecy regarding the clients' affairs (the legal professional privilege) and, therefore, he or she is waived from reporting and must, instead, draft and hand over the reportable information to the client for the client's to report it to the tax authorities;

v) Intermediaries or relevant taxpayers with reporting obligations in Denmark must register for DAC 6 purposes with the Danish tax authorities no later than eight days after the reporting obligation takes effect; and

vi) There is no defined maximum penalty for failure to report, but minimum penalties ranging from DKK 25,000 to DKK 400,000 are expected to apply, depending on the net-turnover and role of the party.

b. DAC 7

The Danish legislation implementing DAC 7 was adopted on June 21, 2022.[789] It introduced reporting obligations for operators of digital platforms located inside and outside the EU and imposes an automatic exchange of information between EU Member States' tax administrations regarding revenues generated by the sellers on such platforms. Denmark had already implemented reporting obligations for platform operators in certain areas (predominantly related to the rental of homes, cars, boats, etc.), but the implementation of DAC 7, which became effective on January 1, 2023, broadens the scope of the reporting obligations.

For further information on the DAC Directives, including DAC 6 and DAC 7, refer to 7450 T.M., *Business Operations in the European Union — Taxation*, section XXII. Administrative Cooperation in the Field of Taxation.

c. DAC 8

On April 20, 2023, the Danish European Affairs Committee published a revised memorandum[790] regarding the DAC 8 proposal, which aims to include crypto-assets under the existing EU framework for the exchange of information. There is currently no Danish regulation regarding reporting obligations for providers of services related to e-money and crypto-assets.

The memorandum describes the background, the purpose and content, and the legislative and economic consequences etc. of DAC 8, and outlines that the Danish government is positive about the proposed directive and supports a wide field of application in order to ensure that the right amount of tax is being paid. The rules on exchange of information are supposed to be implemented in the Danish Tax Reporting Act[791] and the related executive order.[792]

The DAC 8 proposes to include non-custodial dividend income to the categories of income and capital which are subject to mandatory exchange of information. Today Denmark exchanges information on four of the six categories of income and capital as defined in DAC 8, which is compliant with the current requirements. There is no reporting scheme regarding life insurance products, which is one of the categories, and the reporting scheme regarding royalties must be strengthened.

Note: On January 19, 2023, the Danish tax authorities initiated a public hearing procedure of the draft bill, which ended on February 23, 2023, and a few formal responses have been referred to in the memorandum: In addition to a number of remarks regarding the definitions in the legal text, it is noted that the level of the proposed minimum pecuniary penalty is too high also compared to the current level of fines determined according to national rules.

8. Estate Tax Treaties

Generally, an inheritance left by a deceased person, regardless of where the inheritance is situated, is subject to Danish inheritance tax if the decedent was a resident of Denmark at the time of death. With the aim of avoiding double taxation of inheritances, Denmark has concluded estate tax treaties with eight countries.

The estate tax treaties are widely based on the OECD Recommendation of the Council concerning the Avoidance of Double Taxation with respect to taxes on Estates and Inheritances of 1966, which was replaced by the OECD Recommendation of the Council concerning the Avoidance of Double Taxation with respect to Taxes on Estates and Inheritances and on Gifts of 1983, although not all of the treaties include provisions with respect to the elimination of the double taxation of gifts.

The main features of Denmark's estate tax treaties are that immovable property is generally subject to inheritance tax in the country in which the immovable property is situated, whereas other assets held by the deceased are generally subject to taxation in the country in which the deceased had his or her

[787] Act No. 1573 of December 27, 2019, on implementation of directive on automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

[788] Executive Order No. 1634 of December 27, 2019, on reportable cross-border arrangements (the "Executive Order").

[789] Act No. 902 of June 21, 2022, on the implementation of the directive amending the directive on administrative cooperation in the field of taxation regarding reporting and exchange of information from operators of digital platforms.

[790] The European Affairs Committee memorandum KOM (2022) 0707, Annex 3 (*Revideret grund- og nærhedsnotat om administrativt samarbejde på beskatningsområdet*).

[791] Act No. 1754 of August 30, 2021 (as amended).

[792] Executive Order No. 1016 of June 22, 2023.

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residence at the time of death. Movable business property of a PE situated in another treaty country may generally be taxed in that other country.

Denmark has concluded estate tax treaties with the following countries: The Nordic countries, i.e., Finland, Iceland, Norway and Sweden (although Sweden has terminated the treaty as it no longer has gift or inheritance tax and Norway has also abandoned taxation of inheritance and gifts and is also expected to terminate the treaty); Germany (as a part of the tax treaty in force between the two countries); Switzerland; Italy; and the United States. See Bloomberg Tax, International Tax Treaties.

B. *Foreign Tax Credit*

A Danish corporation deriving income from foreign sources may be entitled to a tax credit with respect to foreign taxes incurred on such income under either an applicable tax treaty or the domestic unilateral credit provision. This credit is also available to individuals.

Generally, under Denmark's tax treaties, the credit available to a Danish company is limited to the foreign taxes actually paid and may not exceed the portion of the total Danish tax that is levied on the net foreign source income, i.e., (foreign source gross income ÷ related expenses) × applicable Danish tax rate, and is determined on a country by country basis.

For further information, see V.B.5.b., above.

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TABLE OF WORKSHEETS

Notes on Tax Forms: Corporations and individuals are to a large extent required to complete tax forms digitally and file them online with the Danish tax authorities. In line with this policy, only a limited number of tax forms are available in paper versions.

A corporate taxpayer is required to complete and file its tax return (Form No. 05.007) electronically through its online E-tax account with the Danish tax authorities. An individual is generally also required to complete and file his or her tax return online, but some individuals are exempted from filing their tax returns digitally (mainly elderly people), which is why a paper version tax return form for individuals is available for download.

A corporate taxpayer accesses its online E-tax account and thus its online tax return option via the following link: https://pdcs.skat.dk/dcs-atn-gateway/login/tsklogin

An individual accesses his or her online E-tax account and thus his or her online tax return option via the following link: https://tastselv.skat.dk/

Both corporate taxpayers and individuals must use a publicly issued digital signature called "NemID" (which is unique to the corporation/individual in question) to log into their online E-tax accounts. Further, any communications with the Danish tax authorities are generally also carried out online via a taxpayer's E-tax account.

The tax forms that, by way of exception, do not need to be completed and filed digitally are available online from the Danish tax authorities at https://skat.dk/en-us/help/forms, where they may be downloaded together with guidelines on the respective forms. The forms are generally updated annually at year end. The main tax forms are available in English, but a few forms exist only in Danish.

Working Papers for this Portfolio can be found online at *https://bloombergtax.com.*

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