

Country by Country Reporting Notification

Who

Danish taxpayers, part of a group are required to file a CbC report, digital notification must be provided to the Danish tax authorities (SKAT) no later than the end of the income year for which the CbC report must be submitted.

The notification must include the identity of the reporting entity and its address, tax jurisdiction, and company number (CVR). Foreign companies must provide a tax identification number for the tax jurisdiction in question.

Going forward, SKAT must be notified if there is a change in circumstances leading to the company no longer being required to submit a CbC report (in other words, the requirements for CbC reporting cease to exist).

As from when

The CbC Notification Form should be submitted for accounting years starting on or after 1 January 2016.

When to be filed

Danish taxpayers are required to notify the tax authorities by the end of the fiscal year about whether it is the company itself that is required to submit the CbC report in Denmark or about what group company is required/designated to file the CbC report. Notification must be submitted in a standardized format, i.e. Form 05.034, through the secure digital communication line via "Kontakt" in "TastSelv Erhverv". The form is in Danish and English.



Danish Transfer Pricing Documentation

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Introduction

The Danish transfer pricing documentation contents requirements have been aligned with the requirements set forth in the final recommendations under the OECD's base erosion and profit shifting (BEPS) Action 13, "Transfer Pricing Documentation and Country-by-Country Reporting" published in October 2015.

A Trilogy which should tell a coherent story

The transfer pricing documentation structure proposed by the OECD has been adopted by Denmark, i.e. three layers of documentation which each have a specific purpose:

- Master File
- Local File
- Country-by-Country Reporting

Taken together, these three documents require taxpayers to articulate consistent transfer pricing positions, and should contain sufficient information to allow for an arm's length evaluation to be performed.

The Local File, Master File and CbC report can be provided in Danish, Norwegian, Swedish or English.

Penalties

Penalties can be imposed if the transfer pricing documentation requirements are not fulfilled within the deadline.

Penalties can also be imposed if supplementary material, a benchmark analysis or an auditor's statement is not submitted at SKAT's request.

General

Who

In accordance with section 3B of the Danish Tax Control Act (skattekontrolloven), Danish taxpayers engaging in controlled transactions must prepare written documentation to substantiate that prices and conditions for intercompany transactions are at arm's length. This also includes domestic intra-group transactions.

Provided certain conditions are met, taxpayers will be exempt from preparing transfer pricing documentation if they are part of a group that on an aggregated level (i.e. not only group entities in Denmark) (a) has less than 250 employees, and either (b) a total balance of less than DKK 125 million, or (c) a turnover of less than DKK 250 million.

Taxpayers engaged in controlled transactions with countries without a transfer pricing relevant double tax treaty with Denmark will however be subject to document the arm's length nature of the controlled transactions between the Danish taxpayer and the foreign entity or permanent establishment.

As from when

The new Master file / Local file approach in accordance with executive order No. 401 (28 April 2016) will be mandatory and apply to the documentation of controlled transactions carried out in accounting years starting on or after 1 January 2017. The new documentation requirements will be optional for controlled transactions carried out in accounting years commencing in 2016.

For previous years, transfer pricing documentation must be prepared in accordance with the requirements stated in executive order No. 42 (24 January 2006).

The company is required to prepare the documentation on a contemporaneous basis which should be finalized at the time of the tax return.

When to be filed

The documentation needs, however, only to be submitted upon request and within 60 days from the day the company receives such a request from SKAT.

Any lack of information or questions about reliability and quality, or, any documentation missing because the company did not prepare it contemporaneously may affect the burden of proof in case of any litigation.

Penalties

Penalties can be imposed if the transfer pricing documentation requirements are not fulfilled within the deadline, whether intentionally or due to gross negligence. It is not a condition for imposing penalties that an income adjustment is made.

The penalty is generally fixed at DKK 250,000 per financial year per entity. In determining the penalty it is considered whether it reflects the economic advantage resulting from the infringement.

The penalty can be reduced by 50 percent if the required materials are subsequently prepared. On top of this, SKAT can impose penalties relating to adjustments, which are calculated as an amount corresponding to up to 10 percent of an income increase. If the applied transfer prices are considered to constitute tax evasion, the penalty can be significantly higher.

Local File

The Local File should consist of three parts, i.e.:

A general part in which the taxpayer has to provide detailed information about the management structure of the Danish entity, its legal ownership structure, its international reporting flows, description of the main activities per business unit, list of competitors, notification of restructurings which took place during the year.

A second quantitative part, focusing on the cross-border intercompany transactions themselves, and the applied transfer pricing methods.

More specifically, the second part requires the taxpayer to disclose the following information: detailed description of business unit activities, the sales/gross margins/operating margins earned per business unit over the past three years (third and related party financial information), list of cross-border intercompany transactions for goods, services, financial and other transactions (including parties involved, transfer pricing policy applied and volume of transactions), information about cost contribution arrangements, list of Advanced Pricing Agreements, etc.

Finally, it should include a functional and comparability analysis to conclude on the arm's length nature of the transactions undertaken by the taxpayer.

A third part where it is required to attach economical, financial and accounting information.

Each separate entity subject to taxation in Denmark should prepare a local file.

Country by Country Reporting

Who

The Danish Parliament passed legislation to adopt CbC reporting in December 2015 (L 2015-12-29 no. 1884).

Subsequently, a Danish executive order No. 1133 (27 August 2016) was issued to provide detailed rules about notice requirements and about how the CbC report must be completed. The executive order became effective as from 1 September 2016.

Accordingly, multinational groups with a consolidated turnover of at least DKK 5.6 billion (EUR 750 million) whose ultimate parent company is a resident in Denmark will be required to make CbC reporting submissions.

The CbC reporting rules will also affect foreign group entities that are residents in Denmark if certain conditions are met.

Master File

The Master File should map each of the business lines separately, and provide a complete blue print of each business line, apart from its overall legal and ownership structure, specifically covering some of the key aspects, namely:

Value drivers of the business, i.e. what propels the premium returns of the business, which could be unique intangibles, marketing strategies, etc.

Overall global supply chain model of the business covering the following information with reference to adequate functional analysis.

Strategy around development, enhancement, maintenance, protection and exploitation of intangibles, namely which entity within the group owns valuable intangibles, and the strategy adopted for ongoing development of present and future intangibles, through contract R&D structures, license agreements, cost contribution arrangements, etc.

Policy around leveraging of finance by the group, specifically covering information about whether the group has any entity performing central treasury functions, strategy around intercompany loans and guarantees, etc.

The group's consolidated financial statements, and information regarding unilateral Advanced Pricing Agreements and other tax rulings relating to allocation of income, which might have been obtained in different countries.

As from when

The CbC report should be filed for accounting years starting on or after 1 January 2016.

What

The new Danish rules are in line with the CbC reporting plan as published by the OECD in October 2015.

Denmark has adopted OECD's XML Schema standardized electronic format.

When to be filed

The filing entity will have to file the CbC report to SKAT (Danish tax authorities) within 12 months following the closing date of the consolidated financial statements of the group.