Country by Country Reporting

Who
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 is required to make CbC reporting submissions.

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

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

What
The Danish rules are in line with the CbC reporting plan as published by the OECD Guidelines in July 2017.

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 the Danish Tax Agency within 12 months following the closing date of the consolidated financial statements of the group.

Country by Country Reporting Notification

Who
Danish taxpayers that are part of a group with a consolidated turnover of at least DKK 5.6 billion (EUR 750 million) are required annually to file a digital notification to the Danish Tax Agency no later than the end of the income year for which the CbC report for the group 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, the Danish Tax Agency 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, if 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 Danish Tax Agency by the end of each fiscal year whether it is the company itself that is required to submit the CbC report in Denmark or what group company is required/designated to file the CbC report. Notification must be submitted through the secure digital communication in "TastSelv Erhverv".

Within a Danish joint taxation, the administration company can submit the CbC notification on behalf of the entire joint taxation.

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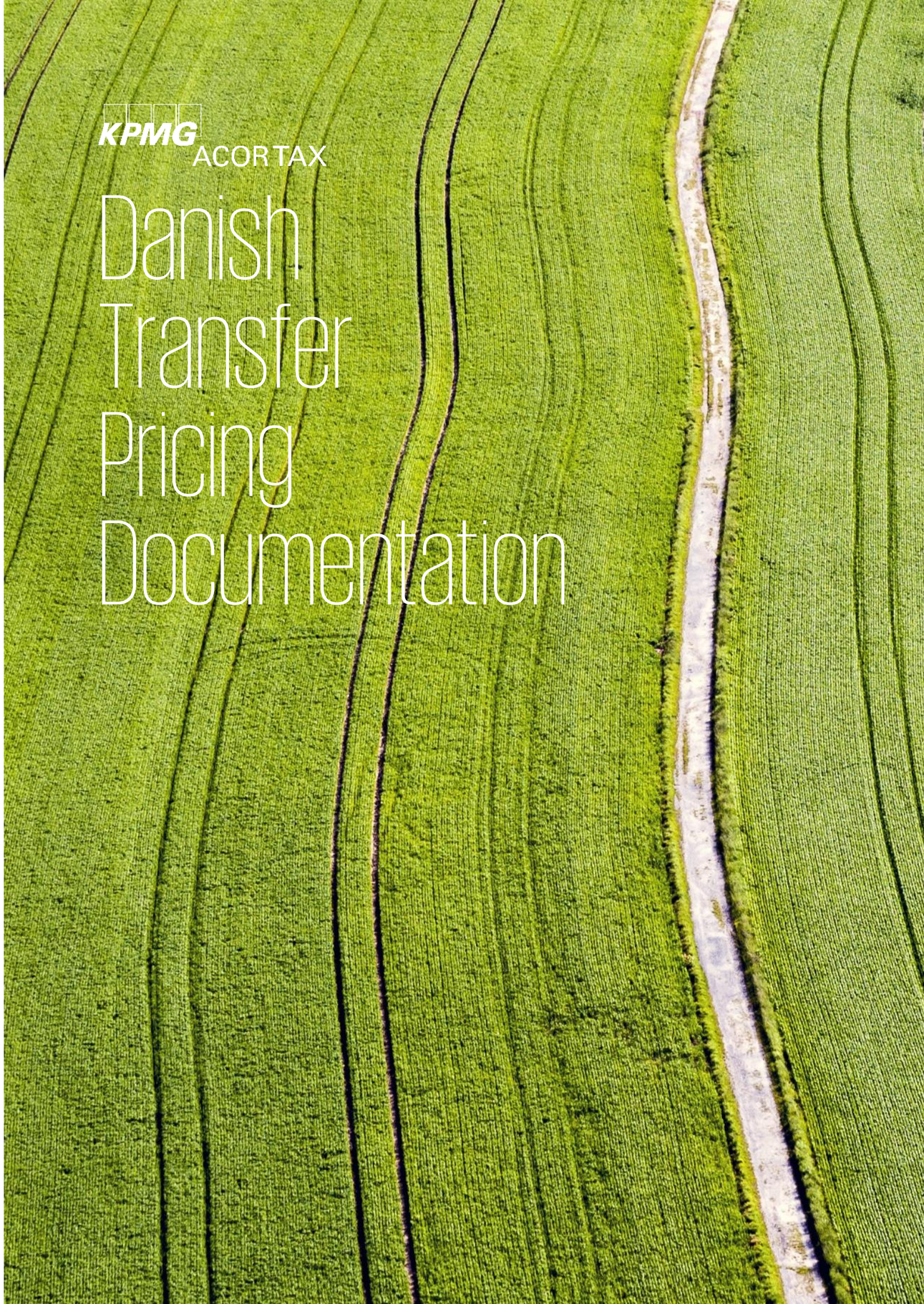

KPMG ACOR TAX

Danish Transfer Pricing Documentation

A Trilogy which should tell a coherent story

The Danish transfer pricing documentation structure consists of three layers of documentation which each has 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, whether intentionally or due to gross negligence. It is not a condition for imposing penalties that an income adjustment is made. Penalties can also be imposed if supplementary material, a benchmark analysis or an auditor's statement is not submitted at the Danish Tax Agency's request.

The fine 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, the Danish Tax Agency 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.

Discretionary assessment

If the taxpayer has not prepared the transfer pricing documentation or if the transfer pricing documentation is inadequate, the Danish Tax Agency can impose a discretionary assessment regarding the taxpayers taxable income.

When a discretionary assessment has been imposed, it is up to the taxpayer to sustain that the assessment is unreasonable or has been imposed on an incorrect basis.

OECD

The Danish transfer pricing documentation contents requirements have been aligned with the requirements set forth in the 'OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations' published in July 2017.

General

Who

Provided certain conditions are met, taxpayers will be obliged to prepare transfer pricing documentation if they are part of a group that on a consolidated basis has:

1. more than 250 employees; **or**
2. a total balance of more than DKK 125 million **and** a turnover of more than DKK 250 million.

Taxpayers engaged in controlled transactions with group counterparties resident in 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 even though the above conditions are not met.

What

Danish taxpayers engaging in controlled transactions must prepare written documentation to substantiate that prices and conditions for controlled transactions are set at arm's length. This also includes domestic intra-group transactions.
The definition of 'controlled transaction' is broad and include all economic and commercial relations within the controlled environment.
As a starting point, all controlled transactions must be documented. Controlled transactions that are of a limited amount and is non repetitive may, however, be subject to a less comprehensive documentation requirement.

As from when

Both Master File and Local File are a mandatory part of the Statutory requirements and apply to the documentation of controlled transactions carried out in accounting years starting on or after 1 January 2017. The content must be in accordance with executive order No. 401 of 28 April 2016.

For earlier income years the transfer pricing documentation requirement is slightly different.

For all years the company is required to prepare the transfer pricing documentation on a contemporaneous basis and it must be finalized no later than 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 the Danish Tax Agency.

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.

Due to a new bill it is expected that the documentation must be submitted no later than 60 days after the deadline of the tax return for fiscal years starting on or after 1 January 2020.

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, its business strategy, description of the main activities per business unit, list of competitors and notification of business restructurings and transfer of intangibles, which took place during the year and the immediate preceding year.

A second quantitative part, focusing on the 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, list of intercompany transactions for goods, services, financial and other transactions (including parties involved, relationship amongst the parties, 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 controlled transactions undertaken by the taxpayer.

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

Each separate entity subject to taxation in Denmark must prepare a Local File.

Master File

The Master File should provide an overview of the group business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity. In general, the Master File is intended to provide a high-level overview in order to place the group's transfer pricing practices in their global economic, legal, financial and tax context.

More specifically, the Master File should include information about the following:

The legal and ownership structure of the group including the value drivers of the business.

An overall global supply chain model of the business and a list of essential service agreements between related parties, except R&D service agreements.

Strategy around development, enhancement, maintenance, protection and exploitation of intangibles (DEMPE functions), 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.