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Global Tax Alert

News from Transfer Pricing

Denmark issues stricter requirements for transfer pricing documentation

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On 4 May 2016, Denmark published a statutory order setting new, stricter requirements for transfer pricing documentation. The new requirements follow the introduction of Country-by-Country (CbC) Reporting in Denmark.¹

Historically the Danish Tax Administration's approach to transfer pricing has been consistent with the Organisation for Economic Co-operation and Development (OECD) Guidelines, which remains the case with the new statutory order. The new statutory order applies to controlled transactions carried out in income years starting on 1 January 2016 or later, and requires the transfer pricing documentation to be prepared according to a three-tier approach, consisting of:

1. A master file containing standardized information relevant for all multinational enterprise (MNE) group members
2. A local file describing the business activities performed by group companies in the respective country
3. Where the requirements are met, a CbC report containing information relating to the global allocation of the MNE group's income and taxes paid

The third tier is required for taxpayers belonging to MNE groups with consolidated turnover exceeding DKK5.6 billion (approx. US\$850 million), along with certain other criteria. As a point of departure from the OECD recommendation, the requirement to prepare the CbC report is applicable for FY 2016, though a provision ensures that CbC reporting requirements for Danish subsidiaries of non-Danish MNE's will first apply for FY2017.

In addition to the formal demands on what information belongs in which tier/file, the requirement for the information needed in the documentation has also been expanded.

Whereas the master file must contain a short functional analysis describing the individual entities' contribution to the overall value creation, the local file must contain a comprehensive analysis including analysis of the so-called "DEMPE"-functions.²

Additionally, the local file must also include agreements between the taxpayer and its related parties.

The transfer pricing documentation requires a reconciliation of the statutory accounts with the numerical content of the local file, and documentation of files and methods used to perform this reconciliation, irrespective of whether or not the taxpayer is required to file a CbC report.

Endnotes

1. See EY Global Tax Alert, *Denmark publishes proposal to introduce Country-by-Country Reporting*, dated 24 September 2015.
2. DEMPE is the acronym for development, enhancement, maintenance, protection and exploitation of intangibles.

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