

Denmark

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1. Concept of Tax Transparency and new tendencies

1.1 What is the concept of tax transparency in your country – what are topics discussed under this term?

Tax transparency is high on the public agenda in Denmark. The knowledge of the taxable event and the identity of the taxpayer is indeed the first and inevitable precondition of an efficient tax enforcement. It is a priority of the tax authorities to get the best and most reliable data which was addressed most recently in the bills (L 13-15) on *Legal Certainty* in 2017 where the purpose was to simplify the tax assessment procedure in order to make the tax rules clearer for both the taxpayers and the tax authorities as of 2019. Therefore, tax transparency in Denmark is first and foremost also a question of providing sufficient and accurate data to the tax authorities from either the taxpayer or third parties. However, tax transparency is no longer just about collecting data for the tax authorities; it is also increasingly about getting data out to the public, as public awareness is on the rise in relation to tax matters.

The concept of tax transparency is thus used in a wide sense in Denmark. Tax transparency is widely discussed both in relation to public tax transparency (such as information on taxpayers, as well as information on the tax authorities, including decisions and their ongoing work) and tax transparency of the tax authorities (taxpayer information).

The trust in the tax system, the tax authorities, and (fellow) taxpayers is essential in Denmark and the other Nordic countries, which all have relatively high taxes in order to finance the public sector. Especially, some NGO's claim that there is a crisis of trust in this area which have been emerging in the last several years, as more and more cases have been brought out in the public debate. These cases seem to show - as viewed by the public eye - either an inadequate tax system, amoral taxpayers, or poorly run tax authorities. To regain or maintain the high trust level in Denmark, several tax transparency initiatives have been taken.

The trust in that the tax administration/tax authorities “do their job” has always been high, but in recent years, some unfortunate cases in the media – such as the repaying of non-paid dividend taxes, as well as *random* real estate taxes – and the downsizing and re-organization of the tax authorities has challenged the general public trust and confidence in the tax authorities. Hence, in 2014, the first “Transparency report” was released and the purpose of the report is to create openness and transparency about the rules that form the basis for the tax authorities’ work, as well as describe how and to what extent the tax authorities audit etc. This was considered to be a major breakthrough by the Minister of Tax at the time in terms of creating transparency and disarming the myths by letting the public into the work of the tax authorities. A Transparency Report is still released every year,¹ as well as an annual Control

¹ See Gennemsigtighedsrapport – SKATs kontrolarbejde i 2016.

Activity Report² (SKAT Kontrolaktiviteter) from the Tax Authorities including the area of priorities (of the projects) and the result of ongoing and finished projects. Together, these reports are released to bring transparency into the work and functions performed by the tax authorities, including risk management.

The (lack of) trust in the fellow taxpayer has also been addressed through tax transparency - both in terms of the taxpayer hiding something from the tax authorities (mainly tax evasion etc.) or from the public eye (mainly tax avoidance etc.). Several initiatives have been taken, including an extensive rise in exchange of information agreements with low tax countries in order to ensure transparency for the tax authorities. The tax authorities' own analysis in the Control Activity Report³ show that 99.5 percent of individuals and 90 percent of the corporations want to pay the tax owed. The analysis also shows that it is a relatively small part of individuals who make mistakes on the tax return and about half of the companies. Only 0.5 percent of individuals and 10 percent of companies are deliberately not making a correct tax assessment, while 6.2 of individuals and 46 percent of companies are unintentionally making mistakes in the tax assessment, according to the tax authorities.⁴ The main reason for micro companies' mistakes might be the lack of knowledge of the tax rules (as they may instead be focusing on their actual businesses), while the main reason for largest companies' mistakes might be the complexity of the tax rules.⁵

Public tax transparency has also been ensured in relation to corporate taxpayers by introducing a publicly available database on certain tax information which is currently based on the last four tax income years, including information on (i) the taxable income, (ii) the actual tax paid and (iii) utilized losses carried forward which makes it possible for everyone (including journalists) to gain limited overall insight into some high-level numbers.

Tax is nevertheless still considered to be an issue between the taxpayer and the state, and most tax transparency initiatives are thus about getting information to the tax authorities, although public transparency has been getting more and more attention in the last couple of years through public awareness.

1.2 Has there recently been a change of the perception of tax transparency?

In recent years, the public debate on tax transparency and public awareness has affected politicians and legislators. The basic idea of digitally collecting data from the taxpayer and third parties are the same, but new information and new procedures have been put in place to provide both the tax authorities and the public with different and better insight to tax information, including in international exchange of information.

In 2012, Denmark signed a FATCA agreement with the IRS. The agreement is based on Model 1 (mutual) and is quite similar to the British FATCA agreement with the IRS, as it includes certain amendments such as a most-favored-nation clause. The FATCA agreement has been

² See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet.

³ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet, page 3.

⁴ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet, page 3.

⁵ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet, page 16 and 24.

implemented into the Tax Control Act (TCA) according to which banks and other (“foreign”) financial institutions must collect and report certain information on their customers to the Danish tax authorities which then will exchange information with the United States of America.

Automatic exchange of information is high on the agenda, as well as Country by Country reporting as a way to obtain a better and more holistic view of the taxpayer. Denmark introduced Country by Country Reporting based on the OECD approach in BEPS action 13 in 2016, cf. art. 3B TCA, for groups with a consolidated turnover exceeding 5.6 billion DKK. The information is not publicly available, but it has politically been agreed in Denmark to support the EU proposal for public Country by Country Reporting.

2. Information procurement and data usage by the tax authorities

2.1 Which principle is pursued in your country: self-assessment or assessment ex officio?

The theoretical principle applied in Denmark is self-assessment and is mostly handled digitally. However, more and more tax returns are based on an assessment ex officio, as more than 95 pct. of the tax revenue from personal income statements is derived from information from third parties such as employers, banks etc.⁶ In 2016, approximately 80 percent of individual taxpayers did not add anything to the self-assessment formula – everything was based on information from third parties and information from the previous years.⁷ As a result, the government has proposed some changes to the information procurement, including a suggestion to change the concept of self-assessment, and rename the self-assessment formula to an “information formula” as of 1st of January 2019 cf. Bills L 13-15 2017-18.

Companies also use a digital self-assessment system to upload their tax information including VAT, where the financial statement is the basis of the tax return as also described below.

2.2 How do the tax authorities obtain information?

The tax authorities obtain information from both the taxpayer and third parties. The latter has especially evolved over the past decades, and is based on cases or situation-specific amendments as more and more information is obtained from third parties.

2.2.1 From the taxpayer himself/herself

The information obtained from the taxpayer depends on the type of taxpayer.

Everyone, who is taxable in Denmark, must annually report his/her income – whether positive, zero, or negative – and report if he/she owns any real estate.⁸ The taxpayer must upon request from the tax authorities also be able to account for the basis of the information provided in the self-assessment. The taxpayer is on the other hand not obligated to provide or account for any other information than what is in the self-assessment. The tax authorities can also require the taxpayer to disclose assets and wealth at the beginning of the income year, as well as at the end

⁶ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet, page 10.

⁷ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet, page 10.

⁸ Cf. art. 1 TCA. Only a few exceptions exist in art. 2 such as children under 15 years without any income.

of the income year, including information on the change and private spending, if the tax authorities do not already have this information.⁹ Most of the self-assessment formula for individuals is pre-filled based on information from other third parties as described latter on.

Individuals and corporations conducting business must also prepare a financial tax statement as the basis for the tax return.¹⁰ The financial tax statement must include tax specifications and statements, and may e.g. be based on the operating accounts and then added tax corrections. The financial tax statement complements the annual account and the daily bookkeeping, as governed by the Danish Financial Statements Act etc. Annual accounts (with annex) and other documents which may be of relevance for the tax assessment must be submitted if requested by the tax authorities.¹¹ It is very unclear what these “other documents” include, despite the tax authorities having issued a statement on their view on the matter.¹² If the taxpayer does not submit a sufficient financial tax statement, the tax authorities can also hire an auditor to produce the financial tax statement.¹³ Also, group corporations and other related parties must submit comprehensive transfer pricing documentation, including Country by Country Reporting.¹⁴

VAT is also based on self-assessment and further information must only be provided upon request from the tax authorities, for example annual accounts etc.

2.2.2 From other sources

The use of information from other sources than the taxpayer himself/herself is quite extensive and the following is therefore not an exhaustive review of all the rules. It should also be noted that a new law has been proposed as of 1st of January 2019 which will exclusively regulate the information obligations of third parties – a tax reporting law for third parties (“Skatteindberetningslov”) – and thereby detached these obligations from the Tax Control Act, cf. bills L 13-15 2017-18.

Any business (employer) must on a monthly basis provide information to the tax authorities on salaries, bonuses, commissions, and other income imposed with a withholding obligation (so-called A-income) paid or credited to an employee.¹⁵ Moreover, a business must also on a monthly basis provide information to the tax authorities on certain other remuneration etc. paid to an employee if not imposed with a withholding obligation (so-called B-income), as well as certain royalties, grants etc. Furthermore, the value of free use of a car, house, boat, or holiday home provided for shareholders, managers, or other employees with significant influence on his/her own remuneration, must also be provided to the tax authorities. The IT

⁹ Cf. art. 6B TCA

¹⁰ Cf. art. 3 TCA.

¹¹ Cf. art. 6 TCA.

¹² See also Professor Jan Pedersen in *Skattekontrolloven – anno 2012*, SR-Skat 2012.94.

¹³ Cf. art. 3D TCA.

¹⁴ Cf. art. 3B TCA.

¹⁵ Cf. art. 7 TCA.

system used for this is called eIndkomst (“e-income”) and in 2015 approx. 206.000 businesses reported a total of 918 billion DKK via eIndkomst.¹⁶

In addition to the aforementioned, companies must also provide information on certain shareholders. Any limited liability corporation taxable in Denmark must provide information on any shareholder owning or controlling 5 pct. or more of the share capital, or voting rights in the company during the income year. Further, other companies (including some limited liability corporations, partnerships, trust etc.) must keep an updated register on all owners and members.¹⁷ Also, if the company repurchases shares from a shareholder, the company must annually provide information to the tax authorities on the purchases, including identification of the seller.¹⁸

Special rules apply for banks, insurance companies, pension funds etc. which must provide information to the tax authorities concerning the identity and transaction with customers – in some situations automatically and in some situations by request of the tax authorities. Most of this information is used to prefill the tax return, for example interest payments, pension payments, capital gains/losses and dividends payments. This also includes companies that distribute dividends as they must report information on the amount and shareholders. In 2015, approx. 2.600 businesses reported an income of a total of 851 billion DDK via the digital system named eKapital (“e-capital”).¹⁹

Moreover, trade unions and unemployment insurance funds must annually provide information to the tax authorities on the identity of members and payments from the members to the union/fund, as it will also be used to prefill the tax return.²⁰

It should also be noted that providers and intermediaries, who assist a taxpayer in purchasing assets or financial instruments and full or partly assist the financing, must document the substance of these arrangements to the tax authorities, if the purpose of these arrangements is to reduce or defer the tax burden.²¹ The tax authorities are then to decide whether or not the arrangement has sufficient substance. The provider and intermediary will also be liable for any increase in the taxable income of the taxpayer, due to the lack of substance.

The tax authorities are also monthly provided with information from municipalities and other public authorities in connection to social security payments, alimony etc. This also includes electronically collecting data from certain specific public authorities’ databases to the tax authorities’ own databases, if it is considered to be essential for the calculation or collection of taxes.²²

¹⁶ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet, page 11.

¹⁷ Cf. art. 3A TCA.

¹⁸ Cf. art. 7E TCA.

¹⁹ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet, page 11.

²⁰ Cf. art. 8T og 8U TCA.

²¹ Cf. art. 10 F TCA.

²² Cf. art. 11 F TCA.

The tax authorities also exchange information with the competent authorities in the Faroe Islands, Greenland and foreign states and territories in accordance with Directive 2011/16/EU on administrative cooperation, tax treaties and other international exchange of information agreements (TIEAs).²³ The Danish tax authorities send/receive information to and from approx. 100 countries and territories which amount to a hundred of thousands of taxpayer information being sent and received every year.

If the tax authorities have received incorrect data on the taxpayer from third parties, the taxpayer cannot himself/herself correct the data online. Instead, the taxpayer must either request the third party to correct the information or request the tax authorities to do an amendment of the tax assessment based on the correct information. The taxpayer can - according to Data Protection Act - challenge the information held by the tax authorities, but the use hereof seems to be very limited.²⁴

2.3 International exchange of information

Denmark has quite an extensive network of exchange of information agreements which includes automatic exchange, spontaneous exchange, and exchange of information on request. As mentioned above, the Danish tax authorities has such agreements (treaties, TIEAs etc.) with approx. 100 countries and territories which amount to hundreds of thousands of taxpayer information being sent/received every year. Especially, the Nordic countries have an extensive cooperation and the tax authorities exchange information on a daily basis, including with Sweden. The Swedish tax authorities can digitally report information directly into the Danish tax authorities' tax system. Lately, Denmark has concluded more TIEAs with so-called tax havens. From 2012 to 2016, the tax authorities had requested information from some so-called tax havens on 12 occasions.²⁵

The tax authorities service *Døgtjeneste* is the point of contact in Denmark when it comes to the exchange of information. The service logs every exchange of information with details, both in relation to international exchange of information and exchange of information between authorities in Denmark.

An agreement on FATCA was agreed in 2012 based on Model 1 (mutual).²⁶ The agreement with the IRS is very much like the British agreement with the IRS and contains a most-favored-nation clause.²⁷

Country by Country Reporting is part of the transfer pricing documentation.²⁸ The digital system was only recently finalized and it would therefore be premature to draw any major

²³ Cf. art 11 TCA.

²⁴ See also the Danish branch rapport in Cahiers de droit fiscal international 2015, vol. 100b, The practical protection of taxpayers' fundamental rights.

²⁵ See the Minister of Tax's answer to question no. 312 of 23th march 2016, dated 5th April 2016 (J.nr. 16-0402908)

²⁶ See art. 8Å TCA. The provision is expected to be move to the tax reporting law for third parties (Skatteindberetningslov) from 2019.

²⁷ See also Kim David Lexner in Danmark indgår FATCA-aftale med USA, SU 2012, 475.

²⁸ See art. 3 B TCA.

conclusions. The information is not publicly available, but Denmark supports the EU proposal for public Country by Country Reporting.

2.4 Legal or practical obstacles for the information procurement

The tax authorities can collect information as described above and use publicly available data in an audit. The tax authorities have used an automatic search engine (Xenon) to digitally collect information in specific cases such as VAT cases. A few issues have come up in respect to the collection of information.

Data mirroring has been widely discussed in the past 10 years. The tax authorities have used data mirroring in audits – that is the copy of ALL material on a taxpayers' computers incl. deleted files and website history etc. – in relation to businesses. However, the tax authorities conclude – after the recommendation from the National Tax Board - that the tax authorities did not have the legal basis to do so as they can only request annual accounts (with annex) and other documents, which may be of relevance for the tax assessment cf. art. 6 TCA. In 2010, it was proposed to provide the legal basis needed to authorize the tax authorities in order to conduct data mirroring, so that the tax authorities could just digitally copy everything and then sort the material back at their own offices (deleting everything that was not annual accounts and other irrelevant materials). The proposal was never put before the Parliament and - to my knowledge - data mirroring is no longer used by the tax authorities.²⁹

The tax authorities receive a lot of information from third parties either automatically or by request, including from banks and payment services such as Nets, American Express and Diners. These information obligations of third parties are regulated by art. 8C, 8D, and 8G TCA. These are considered essential for the tax audit by the tax authorities, and have been used in various projects such as Money Transfer, Credit Card as well as in Transfer Pricing cases. However, an approval is needed from the National Tax Board when information is collected on an unnamed basis. The tax authorities must also - as far as possible - first contact the taxpayer himself /herself to try to obtain the requested information from him. Furthermore, a proportionality principle applies, and the tax authorities must justify the request of the information needed. It is unclear how and to what extent these assessments are made. In the recent years, a lot of information has been collected in this way.

Also, the use of illegally obtained information has been discussed. In the recent years, the tax authorities have used leaked and stolen data in their audits. In 2016, the Minister of Tax authorized the tax authorities to buy leaked information in connection to the Panama Papers and it is likely that this practice will continue in the future if the approved by the Minister of Tax.

2.5 The usage of the information in the tax administration, especially in regard of automatization and digitalization of the tax assessment procedure

Digitalization and automatization of the use of information in the assessment procedure is high on the agenda in Denmark and widely used. As mentioned earlier, the tax assessment of

²⁹ See also Professor Jan Pedersen in Skattekontrolloven – anno 2012, SR-Skat 2012.94.

individuals is generated automatically and digitally generated, sent, and assessable on a secure log-in website of the tax authorities. As most individuals do not add changes to the prefilled tax assessment, it becomes the final tax return in most cases.³⁰

3. Protection of the taxpayer

3.1 Constitutional law (also in comparison to human rights)

The Danish Constitution does protect the taxpayer together with numerous other laws such as the Administration of Justice Act, the Public Administration Act, the Tax Administration Act, the Tax Control Act, and the Personal Data Act etc.

The Danish Constitution states that no tax can be imposed, altered, or repealed except by law,³¹ and also that the home is inviolable.³² As a consequence, a home etc. cannot be searched without a court ruling or other legal basis. The tax authorities have the right to carry out an inspection at the premises of a business, given that it is necessary for an effective tax assessment despite not having a court order. In practice, this entails full access to all premises from where the business is run.³³

In 2012, further legal basis was provided to the tax authorities to search private property if activities of a professional nature occurred on the outside premises of the private property cf. art. 86 Act on Taxation at the Source and art. 74 of the VAT Act. The aim was to combat undeclared work (black economy) of the workers – not the owner of the premises - and the search did not include the private residence in itself, but everything else. It was publicly debated whether such search was in violation of the Danish Constitution and art. 8 EMKR.³⁴ In 2015, the legal basis for such searches without a court ruling was repealed.

3.2 Tax secret

Tax is considered to be a matter between the state and the taxpayer and the tax authorities may only collect information on the taxpayers that are relevant for the tax authorities in performing its duties. The employees at the tax authorities are only allowed to look into personal or confidential information of the taxpayer if it is necessary in order to perform their specific job. The actual (digital) access to such information should therefore be limited. Instead, the tax employee that has access to such confidential information must assess whether or not the information can be shared with co-workers, and if so with whom, and to what extent. The tax authorities also have an unconditional duty of confidentiality in relation to information on financial, business, and personal matters.³⁵

Information on income or other financial matters etc. can be shared with other public authorities, while the sharing of confidential information requires either legal basis, unambiguous consent from the taxpayer, or it must be assumed that the information is essential to the authority or a pending decision to be made by the authority.³⁶ The legal

³⁰ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet, page 13.

³¹ Cf. art. 43.

³² Cf. art. 72.

³³ Cf. art. 6(4) TCA. The government has set up a working group to review all rules that allow the (tax) authorities to carry out inspections at the premises of individuals and companies.

³⁴ See for example Professor Søren Friis Hansen in "Ikke hjemme hos mig SKAT!", SPO 2010,1.

³⁵ Cf. art 17 of the Tax Administration Act.

³⁶ Cf. art. 28 of the Public Administration Act.

consequences of a violation of the secrecy are that the employee can be fired in severe cases, and even be fined or imprisoned, according to the Criminal Code. In more minor cases, a breach of secrecy will result in reprimands, re-allocation, or demotion.

3.3 Data protection laws

The Danish Data Protection Act was based on the EU Data Protection Directive (95/46) and is currently being adapted to the new General Data Protection Regulation (2016/679). The general view of the Ministry of Justice is that the Danish authorities, including the tax authorities, are compliant with the Data Protection Act and with some adjustment will also be compliant with the new General Data Protection Regulation. However, there have been some violations.

In 2015, an independent analysis by Kammeradvokaten showed that the new digital system for collection of taxes (EFI) was in breach of the Danish Data Protection Act, as it did not delete information on the taxpayer after the collection and kept collecting information on the taxpayer, including information on the taxpayer's children and the spouse (third parties). The process was stopped in 2015.

In 2016, the Danish Data Protection Agency expressed concerns towards the “new password” procedure on the tax authorities' website, as a new password could too easily be sent to a phone number or e-mail if a person was in possession of the social security number of another taxpayer, and thereby gain access to sensitive information. The procedure was then changed in 2016.

On the 25th of October 2017, the new Bill L 68 2017-18 was proposed to convert the General Data Protection Regulation into Danish law and replace the current Danish Data Protection Act as of the 25th May 2018. The Ministry of Justice states in the Bill that, from an overall perspective, many of the current principles will continue and that public authorities, who follow the Personal Data Act today, are well on their way to comply with the new rules. The Ministry of Justice has prepared a very comprehensive report.³⁷ However, it should be noted that even though the aim of the General Data Protection Regulation is to ensure a uniform data protection in all Member States, the Justice Department seems quite focused on maintaining a Danish interpretation and implementation, including to use art. 23 to restrict the scope of some rights and obligation in terms of notifying the individual, and the individual's access to the data in some situations.

3.4 Compensation for damages and judicial protection

Complaints about the disclosure of confidential information or breach of tax secrecy must be dealt with in accordance with the tax authorities' own internally established guidelines,³⁸ as it is not considered “a decision” by the tax authorities.³⁹ The complaint is processed by the manager (leader) in the specific department (unit) that is concerned in the complaint, and can be appealed to the *Borger- og retssikkerhedschefen*, whose purpose is to ensure consistency

³⁷ See Databeskyttelsesforordningen – og de retlige rammer for dansk lovgivning, betænkning 1565/2017.

³⁸ See SKM2014.571.SKAT.

³⁹ In 2008, the National Tax Tribunal rejected a complaint about the tax authorities' disclosure of information to another administrative authority and stated that the decision to disclose the information was not to be considered a decision against the complainant and could therefore not be appealed to the National Tax Tribunal.

and fair treatment of the taxpayers. In all complaint cases, the *Borger- og retssikkerhedschefen* will do follow-ups on complaints quarterly.

There are no special provisions on damage compensation to the taxpayer from the tax authorities in relation to a violation of the right to privacy or breach of tax secrecy. However, it cannot be excluded that the taxpayer can claim damage compensation from the tax authorities according to tort law (case law), if the taxpayer can demonstrate a clear connection between the breach of tax secrecy and a loss, even though no such Danish cases exist to my knowledge.

4. Transparency of the tax administration

The tax administration in Denmark is quite transparent in many areas, due to the annual reports on transparency and activities (incl. risk management)⁴⁰. Further decisions of general importance are made publicly available and the tax authorities continuously make public announcements,⁴¹ such as the semi-annual update of Legal Guidelines⁴² from the tax authorities on their view and interpretation of tax laws and case law.

4.1 Publication habits of the tax administration

Every year, the tax authorities publicly announce their plan on how to control activities in the upcoming year. The Control Activity Plan provides a status on the ongoing work, as well as the upcoming control work and priorities of the tax authorities.⁴³ The 2017 plan shows that the focus is on the specific areas, where the risk of errors and fraud are considered the greatest and therefore the initiatives have the greatest effect on the tax gap. The focus in 2017 is particularly on organized tax fraud and global tax fraud, but also large companies, VAT fraud, and dividend taxes. In addition to an increased focus on current risks and emerging trends, it also shows that the tax authorities continue to focus on internet trade, undeclared work, social dumping, and a wide range of other areas.⁴⁴ The annual Control Activity Plan gives the public an insight into the work, thoughts and priorities of the tax authorities.

Moreover, all administrative directives and decisions including decisions from the National Tax Tribunal and advanced rulings from the National Tax Board (if of general importance) are made publicly available in an anonymous form. All judgments from the courts are also publicly available through the tax authorities' website.

Denmark does not operate with a black list of tax havens.

4.2 Transparency towards the taxpayer

The taxpayers can access all standard information digitally reported by third parties as part of the preliminary tax assessment as well as former tax returns on the secure log-in on the tax authorities' website at any time. On the website, the taxpayer can assess information on income such as salary, interest, dividends etc., as well as information on interest paid, real

⁴⁰ See Gennemsigthedsrapport – SKATs kontrolarbejde i 2016 and SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet.

⁴¹ The announcement can be found on the tax authorities' website.

⁴² See <http://skat.dk/skat.aspx?oid=124>

⁴³ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet.

⁴⁴ See SKATs Kontrolaktiviteter 2017 – Styrket regelefterlevelse på skatteområdet.

estate and vehicles owned. Furthermore, information can be assessed upon request, cf. Public Administration Act. Also, the taxpayer has the right to challenge information held by the tax authorities.

If the tax authorities disagree with the self-assessment, the tax authorities must send notification to the taxpayer which includes a new proposed tax assessment and grounds for the proposed amendments.⁴⁵ The purpose is to give the taxpayer the opportunity to assess the correctness of the newly proposed tax assessment and to respond to the notification.

It is important in each case to establish if and when a specific suspicion of a criminal offence arises in a tax audit as the disclosure requirements in the TCA from that point on cannot be used against the specific taxpayer (self-incrimination). The tax authorities have an obligation to inform and guide the taxpayer on the matter.⁴⁶ The taxpayer is then only obligated to provide information to the extent that information is not relevant to the alleged offence. It is not always clear if and when a tax audit becomes a criminal investigation, as it depends on the circumstances. Sometimes the tax authorities' audit depends on a criminal investigation and therefore the tax authorities hand over the case to the police, while in other situations, the tax authorities close the tax case and issue a fine or hand over the case to the police for them to issue a fine - or even worse in some cases.

4.3 Usage of information towards the public, especially naming & shaming approach

Everyone, including individuals and companies (domestic as well as foreigners), can gain access to some tax information cf. Danish Public Information Act.⁴⁷ The Danish Public Information Act provides access (upon request) to all public administration activities, including decisions and any other activity of public administration. However, information on financial, business, or personal matters are still subject to the secrecy of tax authorities. Further, the tax authorities cannot disclose information on a specific case or person (to other than the person) including whether or not a case has been initiated.⁴⁸

The tax authorities have an obligation to review all documents to determine if they contain confidential information, if access has been requested. If a document contains both confidential information and information that is not covered by the tax secrecy provision, the tax authorities must disclose access to the information that is not subject to confidentiality. The tax authorities are also obligated to consider - on their own initiative - in each case whether further public access should be granted.⁴⁹ The tax authorities must also make an overview of all the documents that have been assessed and excluded (fully or partly) from public access.

The public access to tax information without request is quite limited, especially in relation to individuals. Everyone can access information on property taxes on real estate in Denmark and hence gain insight into this tax information, while the States total income from taxes divided

⁴⁵ Cf. art. 19 and 20 of the Tax Administration Act.

⁴⁶ Cf. art. 10 of Tvangsindgrebsloven.

⁴⁷ Cf. art. 7 DPIA.

⁴⁸ Cf. art. 35 DPIA.

⁴⁹ Cf. art. 14 DPIA.

into general categories (including personal income taxes, corporate income taxes, VAT etc.) can be seen in national budget.

In relation to companies, a public database was established in December 2012 and it still provides certain tax information on companies in Denmark. The database includes information on (i) the taxable income, (ii) the actual tax paid and (iii) utilized losses carried forward and will prospectively hold such information for five income years. One of the reasons for introducing this public database was, according to the then Minister of Tax, to counter some of the myths about how much companies pay in income taxes. The then Minister of Tax therefore created transparency about the companies' tax payments and their contribution to the state. Another reason was also to motivate companies to contribute to the financing of the state, according to the then Minister of Tax.⁵⁰ It could therefore be seen as a *naming and shaming* approach and the annual release of information on a new income year does get some media attention.

Additionally, with the effect from 2017, a public digitally assessable database of beneficial ownership of most companies is available, as the Danish implementation of the EU directive 2015/849/EC. The information in the database is based on information provided by the companies.

⁵⁰ See <http://www.skat.dk/skat.aspx?oid=2089696&vid=0&lang=da>