Denmark

Tax Risk Management

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Latest Information:

This chapter is based on information available up to 18 March 2014.

1. Introduction

With an overall tax burden currently amounting to 49.6% of GDP, Denmark has one of the highest tax burdens in the world. [2] In line with this, the prevailing perception in Denmark appears to be that taxation is a necessary foundation for the comprehensive Danish welfare state and that everyone – individuals and corporations alike – should pay their fair share. [3] At the same time, the Danish tax authorities have traditionally been perceived as having a high degree of integrity. However, recently the tax authorities' behavior and allegedly harsh collection methods have been subject to debate and criticism in the general media causing a decline in taxpayers' confidence in the tax authorities. [4]

Even though corporate taxes only amount to 6% of the overall Danish tax revenue, [5] corporations' tax affairs more frequently seem to get front page coverage in the Danish media and attract great attention from politicians and NGOs. Accordingly, especially larger corporate groups appear to face an increasing risk of reputational damage due to the media's quite extensive coverage, which may be one of the reasons why tax risk management has moved up the agenda among larger Danish corporate groups. Other or related reasons may be the increased focus on corporate social responsibility (CSR) and greater awareness among CEOs and board members that tax is not only a compliance issue that can be handled by their accounting/financial department, as the handling of tax affairs may present significant costs and financial risks to the group. [6] Moreover, an important factor behind top management's enhanced awareness on tax matters may be that the Danish parliament in recent years has enacted

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2. Cf. the website of the Danish Ministry of Taxation: www.skm.dk, and OECD: Revenue Statistics 2012, p. 95.
3. A recent study has concluded that the general acceptance of tax evasion and tax avoidance has declined from 1981-2010, cf. *Jørn Goul Andersen*: Borgerne og lovene, 2010, p. 37 et seq.
4. Cf. opinion poll prepared by Megafon, 13 September 2013.
5. Cf. website of the Danish Ministry of Taxation: www.skm.dk.
6. Cf. *Finn L. Meyer & Anders Bjørn*, Revision & Regnskabsvæsen, 2011, issue 6, p. 36 et seq.

several legislative tax measures aimed primarily at multinationals, and that the tax authorities have begun to scrutinize aggressively the transfer pricing policies of multinational groups. [7]

The Danish corporate tax rate is currently 24.5% (2014), but the rate will decline to 22% from 2016 when an already enacted reduction has been fully implemented. [8] The corporate tax has to be paid on account twice a year. No local income taxes, franchise taxes or net wealth taxes are levied on companies or permanent establishments in Denmark. However, companies may also be subject to VAT, real estate taxes, different kinds of excise duties and environmental taxes as well as customs. Moreover, companies have to withhold tax when paying salaries and other kinds of remuneration to its employees, directors, etc. [9] In addition, companies carrying on certain activities exempt from VAT are liable to the payroll tax. [10] The collection of taxes is taken care of by SKAT, which is an independent national agency responsible for administering and enforcing Denmark's tax laws. [11]

Companies that are subject to Danish taxation have to make a self-assessment and, as a main rule, the tax return has to be filed at the latest 6 months after the end of the income year. [12] If the tax authorities intend to make an adjustment, the company – as a main rule – has to be notified no later than 1 May of the fourth year following the end of the income year in question. [13] However, for transfer pricing adjustments the deadline is 1 May of the sixth year following the end of the income year in question. [14]

The sources of Danish tax law consist of a variety of statutory acts, executive orders, ministerial decrees, guidelines, tax treaties and other international agreements, administrative rulings and court judgments. In addition, being an EU Member State has entailed that EU law and the judgments from the European Court of Justice have played an increasingly important role. Altogether, it seems fair to conclude that the Danish tax regulation generally is perceived as being very complex by individuals as well as businesses. [15]

2. Description of the Tax Control Framework

As stated in a previous chapter of this publication, a tax control framework can be defined as a system or process to identify, mitigate, control and report tax risks. Accordingly, the tax control framework should be considered part of the general business control framework, which will be different for every organization. [16] In a Danish context, some larger corporate groups have made efforts to build appropriate tax control frameworks. The scale of the tax control frameworks and the level of detail have varied, but typically the focus of attention has, among other things, included organizational, managerial, financial, risk, reporting and compliance issues related to tax. [17]

7. Cf. *Christian Plesner Rossing* et al., Revision & Regnskabsvæsen, 2012, issue 5, p. 62 et seq.
8. Cf. Sec. 17(1) of the Corporate Tax Act.
9. Cf. Secs. 46(1) and 43 of the Act on Taxation at Source.
10. For additional information, *see* section 5.3.5.
11. For additional information, *see* section 5.
12. Cf. Secs. 1(1) and 4(2) of the Tax Control Act.
13. Cf. Sec. 26(1) of the Tax Administration Act.
14. Cf. Sec. 26(5) of the Tax Administration Act.
15. Cf. *Michael Serup*, Skattepolitisk Oversigt, 2010, p. 273 et seq.
16. For a general definition and analysis of the concept, *see* Chapter 2 of Part A.
17. For additional information and examples, *see* section 4.

The Danish recommendations on corporate governance recommend that the board of directors in the management commentary reviews and accounts for the most important strategic and business-related risks, risks in connection with the financial reporting as well as for the company's risk management. [18] As a consequence of the amounts and risks involved, the company's tax affairs may often be a relevant element to consider in this context. [19]

From the taxpayer's perspective, it is of interest to know how the tax authorities select the taxpayers to be audited and to know on which areas the tax authorities are primarily focusing. The Danish tax authorities use a risk-based approach when selecting the taxpayers to be audited. [20] Accordingly, by utilizing gathered experience, knowledge and data the tax authorities prepare an annual production plan, in which certain key action areas and projects are described. [21] One of these projects aims at establishing an enhanced relationship between the tax authorities and some of Denmark's larger corporate groups. [22] The idea is to create an open forum, where the corporate groups themselves present the tax issues that are creating uncertainty. In return, the tax authorities have to assess the issues presented as quickly as possible in order to minimize the group's tax risks. It has yet to be seen whether this project will turn out to be fruitful for both the tax authorities and the participating corporate groups. However, it must be expected that establishing such enhanced relationships may pose challenges, [23] and so far the reactions to this initiative have been mixed. [24]

Several of the largest Danish companies represented in the OMX C20-index have begun to disclose information about tax risks, tax policies and/or their tax risk management efforts in annual reports or on their company websites. These companies include A.P. Møller – Mærsk, Carlsberg, Chr. Hansen, FLSmidth, Novo Nordisk, Novozymes, TDC and Vestas. Some of the descriptions are relatively short and form part of the overall description of the company's risk management framework. However, some of the companies elaborate more thoroughly on tax risks and tax risk management. In these cases, the company's tax risk profile is often explained briefly at first. Examples include statements such as: "*pursuing a competitive tax level in a responsible way*", "*has a low appetite for tax risk*" and "*pursues an active, but not aggressive tax policy*". Often these statements are followed by a description of the means to be used in this regard, including:

- a continued focus on tax risk management to ensure a low level of unidentified risks and on ensuring correct and timely reporting;
- maintaining a well-documented transfer pricing system;
- managing uncertainties with respect to tax risks by entering into advance pricing agreements (APAs);
- initiatives to enhance tax awareness within the organization and create clearly defined roles and responsibilities between line management, local finance and the group tax function;

18. Cf. Sec. 5.1.1 of the Recommendations on Corporate Governance, May 2013. For additional information *see* section 3.2.
19. Internationally, a growing view appears to be that companies should be able to explain to their stakeholders how their tax strategies are in line with their corporate responsability policies, cf. *Arjo Van Eijsden*, EC Tax-Review, 2013, pp. 56-61.
20. For additional information on the tax audit procedure *see* section 5.2.
21. Cf. SKAT's Produktionsplan 2013, p. 8.
22. *See also* section 5.2.1.
23. For a discussion of the problems involved in introducing enhanced relationsship in Sweden see *Robert Påhlsson*, Intertax, 2013, p. 255.
24. *See Jens Kr. Elkjær* et al., Revision & Regnskabsvæsen, 2013, issue 7, p. 84 et seq.

- drafting of specific tax compliance policies;
- creating and maintaining a group tax risk database;
- making sure that the group tax strategy is endorsed by top management; and
- ensuring that all employees of the tax organization are aligned in terms of how to deal with taxes and tax risk.

3. Impact of Legislative and/or Regulatory Changes and Public opinion

Tax risk management is about handling tax risk and is, among other things, affected by different non-tax legislation in Denmark, such as company law, auditor legislation, recommendations on good corporate governance as well as the opinion of stakeholders and the public. These issues are addressed below.

3.1. Impact of company law and auditor legislation

According to Danish company law, a Danish limited company can either have a board of directors and management or just management potentially supervised by a board of supervisors. [25] In both cases, the management is in charge of daily operations. [26] The board of directors or the board of supervisors constitute the top management and are responsible for establishing the necessary procedures for risk management and internal controls. Further, the top management has to ensure that the management performs its duties in a proper manner and in accordance with the guidelines given. It is, therefore, an obligation of top management to ensure that the management is following the tax policy given and to ensure the necessary procedures to handle risk, including tax risk. [27]

Tax risk management has to ensure that the company is only exposed to risk to the extent that the top management finds acceptable. Both the probability of a tax adjustment and the potential size of the adjustment should be taken into consideration when designing the criteria for reporting to the top management. [28] In practice, it seems that International Accounting Standard number 12 on income taxes (IAS 12) often plays a significant role in this regard.

Since 2009 Danish listed companies and companies within the financial sector have been required to establish an audit committee. [29] The responsibilities of the audit committee include oversight of financial reporting and obligations, monitoring the effectiveness of the internal control process and of the internal audit, oversight of regulatory compliance and oversight of the external auditor. [30] Subject to certain conditions, these responsibilities can also be carried out by the board of directors or the supervisory board. However, a study from 2011 showed that 77% of the comprised Danish companies had chosen to establish a separate audit committee. [31] In practice, the audit committee often seems to play an important role with respect to tax risk management in larger Danish corporate groups.

To ensure an ongoing tax risk assessment, monitoring and management is needed. This can only be achieved with effective reporting between local tax/finance managers, the tax department, the

25. Cf. Sec. 111 of the Company Law Act.
26. Cf. Sec. 117 of the Company Law Act.
27. Cf. Secs. 115 and 116 of the Company Law Act.
28. Cf. *Christian Plesner Rossing* et al., Revision & Regnskabsvæsen, 2012, issue 5, p. 62 et seq.
29. Cf. Sec. 31 of the Act on Approved Auditors and Audit Firms.
30. For additional information, *see Henrik Kofoed*, Revision & Regnskabsvæsen, 2008, issue 9, p. 56 et seq.
31. Cf. KPMG: Analyse af revisionsudvalg – interne kontroller og risikosystemer, 2012.

management and the top management. This should also be addressed in the guidelines given to the management and further addressed by setting up the necessary procedures.

There are no detailed requirements in Danish company law with regard to either the tax policy or tax risk management procedures. [32] The necessary tax risk management must be determined on a case by case basis by the top management and performed by the organization as a whole. Often tax risk management seems to be considered as part of the group's more general enterprise risk management framework.

3.2. Impact of Recommendations on Corporate Governance

The recent "Recommendations on Corporate Governance" from May 2013 does not directly address tax governance, [33] while some more general recommendations address tax issues and tax risks. The recommendations follow the "comply-or-explain" principle and have to be adhered to by companies traded on the Danish Stock Exchange (OMX). [34]

It is recommended that the board of directors maintain an ongoing dialogue between the company and the shareholders. The purpose is for the shareholders to obtain insight into the company's economic potential and policies and for the company to obtain insight into the shareholders' opinion on the policies, etc. [35] This also includes the company's tax policy. [36] It is further recommended that the board of directors adopts policies which respect the opinion of the shareholders.

Moreover, it is recommended that the board of directors decide on the company's risk management. [37] This is considered to include tax risk. According to the previous version of the recommendations, the board of directors were only to identify the company's risk while, according to the latest recommendations, the board of directors is to decide on the matter thereby putting (tax) risk management firmly on the agenda. [38] In total, tax governance is not addressed directly in the Danish corporate governance standards.

3.3. Impact of CSR

Tax is increasingly seen in the light of corporate social responsibility and has entered the media as well as the boardrooms in Denmark. Good tax governance is, therefore, also getting more attention by company stakeholders and must be handled with care. [39]

In 2002, TDC restructured a German subsidiary which resulted in a very large tax deduction in Denmark. The Danish tax consequences of the transaction were confirmed by the Danish Tax Assessment Board in a binding ruling. [40] However, the public did not respond well and TDC received massive media attention which reflected negatively on the company's image. Further, as a result of the case, the Danish parliament amended the legislation thereby preventing other taxpayers from obtaining a similar

32. Cf. Secs. 115 and 116 of the Company Law Act.
33. Cf. "Nye Anbefalinger for god Selskabsledelse", 2013, from the Committee on Corporate Governance (www.corporategovernance.dk).
34. If the company does not comply, it has to explain why it has chosen not to follow the recommendations and what measures it has taken instead.
35. Cf. the Recommendations on Corporate Governance, 2013, no. 1.1.1.
36. Cf. the comments prepared by the Audit Committee Institute to the Recommendations on Corporate Governence, 2013, no. 1.1.1.
37. *See* the Recommendations on Corporate Governence, 2013, no. 5.1.1.
38. *See* the Recommendations on Corporate Governance, 2010, no. 8.1.2. and the comments prepared by the Audit Committee Institute to the Recommendations on Corporate Governance, 2013 no. 5.1.1.
39. *See Rasmus Kristian Feldthusen*, Skattepolitisk Oversigt, 2010, p. 181 et seq.
40. Cf. TfS 2003, 850 LR.

deduction. Other large companies such as *Jyske Bank, McDonalds, Shell* and *Novo Nordisk* have also received media attention with respect to taxes and CSR.

In 2012, Mads Øvlisen, honorary professor of CSR and former CEO of Novo Nordisk, stated that paying corporate tax should not be confused with CSR policy. [41] He argued that tax is measured by law, while CSR is measured by a different code of morality. The Danish NGO, *IBIS*, responded by stating that if CSR was merely about the wording of the law and not the spirit of the law, there would not be much left to call CSR. [42] Furthermore, the Tax Justice Network has declared that tax is the return to society due to investments made by society from which the companies benefit, such as education, legal infrastructure, etc. According to this line of thinking, tax should not be considered a cost, but a distribution of profit in the same category as dividends. [43]

In a Danish survey from the spring of 2012, more than 1,000 people were asked what has the greatest impact on whether they relate positively or negatively to a company. [44] Sixty per cent of the respondents reported that they relate positively or negatively to a company depending on whether or not the company is paying taxes in Denmark. The only thing more important than paying taxes in Denmark was whether or not the company created jobs in Denmark (70%). Moreover, 57% disagreed that tax is a cost, and even found it unethical to treat tax as a cost. Lastly, 61% agreed that multinational companies avoid taxes and 63% agreed that all companies should publicly disclose all tax information.

The public discussions resulted in a new bill stating that every Danish company's taxable income, corporate tax and utilized tax losses carried forward should be made publicly available online (referred to as the "pillory" by the public). [45] According to the comments to the bill, the aim is to ensure transparency and to motivate companies to contribute to the financing of the Danish welfare state. [46] The website administered by the tax authorities crashed when introduced in December 2012 due to the massive interest of the public. Moreover, according to a recent proposal, the right to carry forward tax losses is forfeited if the corporate taxpayer does not register these losses at a new central digital register for tax losses. [47]

In conclusion, a company should be able to explain its tax strategies and tax payments in connection with the adopted CSR policy. Tax risk management in Denmark is, therefore, not just about the tax assessment and the responsibility thereof, but also the effect on the business and on the image of both the company and its management.

4. Tax Control Framework in Practice

The general awareness with respect to the tax control framework – i.e. the identification, mitigation, control and reporting of tax risk – seems to have increased in the Danish business environment over the last couple of years. However, it is hard to determine whether Danish businesses tend to regard tax risks as operational or strategic.

41. *See* www.csr.dk/%C3%B8vlisen-skat-er-ikke-csr.
42. *See* www.ibis.dk/articles/virksomheders-skat-er-csr/.
43. *See Arjo van Eijsden*, EC Tax Review 2013-1, p. 56 et seq.
44. *See* www.radiuskommunikation.dk/media/11545/skat_og_csr_-_radius_kommunikation.pdf.
45. Cf. Sec. 17 (2-4) of the Tax Administration Act. *See also* sections 5.2.2. and 7.
46. *See* comments in bill no. 173 of 25 April 2012.
47. Cf. Bill L 144 (2013/2014).

The main objective of a tax control framework will generally be to ensure that the business is only exposed to risk to the extent that the top management finds acceptable. Thus, the practical objective of the tax control framework is to ensure competent and appropriate registration, documentation, execution, control and reporting with regard to tax. [48]

The increased attention on the (top) management level – with respect to the tax control framework – has mainly been seen in larger corporate groups with significant international activities. Some of these corporate groups have adopted an explicit tax strategy based on guidelines and principles set forth by the (top) management and prepared in line with the group's code of conduct/ethics. Among smaller and more domestically focused corporate groups the attention and significance of tax risk management differs considerably.

One of the key tax risks that Danish companies typically must deal with is the fact that Danish tax legislation frequently is subject to rather significant changes, in particular with regard to anti-avoidance measures which quite often are politically motivated and/or caused by reactions in the press or among the public to specific high-profile cases or issues. [49] Frequently, this fact will be one of the main challenges in long-term tax planning and long-term tax risk management. Further, as a result of this legislative process, on one hand the tax legislation is very detailed, but on the other hand it is unclear due to hasty processing. This also creates a challenge in tax planning and tax risk management because certainty on the specific effects of newly introduced legislative measures often will have to await interpretation by the Tax Assessment Board, the National Tax Tribunal, the Danish courts and/or sometimes even the ECJ.

The scale of the tax control frameworks and the level of detail varies, but typically the focus of attention in large businesses includes: [50]

- how to organize the tax risk function, including whether or not an in-house tax function/department should be established and – if so – how the tax function should be managed and staffed, the scope of functions and competence of the tax function/department and the relationship to the accounting and treasury functions and to other group entities. Reflections should also be made with regard to whether the tax function should be (mainly) centralized or decentralized;
- how to ensure that tax has sufficient attention among the members of the corporate groups' top management, including minimum requirements for the top managements' involvement in the tax function;
- policies for compliance with tax legislation;
- policies and framework for tax planning;
- requirements regarding the preparation, documentation (defence files), quality control and filing of the tax return and other tax relevant documents;
- internal controls and division of functions;
- when, to whom and how tax and tax risks are to be reported within the organization;

48. Cf. *Finn L. Meyer & Anders Bjørn*, Revision & Regnskabsvæsen, 2011, issue 6, p. 36 et seq.
49. *See also* section 5.5.
50. Cf. *Finn L. Meyer & Anders Bjørn*, Revision & Regnskabsvæsen, 2011, issue 6, p. 36 et seq.

- the role of tax in the group's daily operations (including wage taxes, VAT, excise duties and customs, etc.) as well as in the group's restructuring and M&A activities;
- requirements related to transfer pricing (including the preparation and maintenance of a defence file);
- requirements concerning the treatment, reporting and control of tax and tax risks with respect to annual reports, etc.; and
- guidelines regarding the use of tax advisors' services, when to apply for binding rulings, cooperation with the tax authorities and handling of tax litigation.

The main general tax risks typically arise in relation to: [51]

- transfer pricing, i.e. the allocation of income between related entities and the determination of arm's length prices in transactions between related entities, in particular with regard to cross-border transactions. International transfer pricing is generally regarded as the most significant high tax risk area by business leaders in Denmark; [52]
- double taxation;
- mergers and acquisitions, i.e. the correct taxation – including the possible tax exemptions and the application of anti-abuse regulations – related to acquisitions/sales of businesses and business assets and to corporate reorganizations;
- withholding taxes on dividends, interest payments and royalties, including determining the beneficial ownership of such payments and the possible application of anti-avoidance regulations;
- limitations of deductions, in particular of losses carried forward, finance costs and costs related to acquisitions and sales of businesses; and
- taxation of activities abroad, including the allocation of income with respect to foreign permanent establishments or subsidiaries abroad.

It is not possible to assess any general industry differences with regard to the objectives and the management of tax risks in Denmark. However, across industries it generally seems fair to conclude that tax risk management has received more attention in later years.

The tax risk function will normally be carried out in-house by the larger internationally working corporate groups, often in cooperation with the auditors or other tax advisors. The increased attention to tax risk management is probably one of the reasons for the current upgrading of the in-house tax functions in several larger Danish corporate groups.

In order to reduce relevant tax risks, it is possible to obtain an advance ruling on the tax assessment (not on valuation issues). [53] The advance ruling is binding for the tax authorities for 5 years but is not

51. *See also* section 5.5.
52. Cf. *Christian Plesner Rossing et al.* Revision & Regnskabsvæsen, 2012, issue 5, p. 62 et seq. In 2012 the Danish tax authorities issued transfer pricing based increases in 67 cases for a total amount exceeding DKK 21 billion (more than EUR 2.6 billion) cf. report of 31 January 2013 (j.nr. 12-0250005) from the Danish Tax Ministry to the Danish Parliament's Tax Committee.
53. Cf. Sec. 21 of the Tax Administration Act.

binding for the taxpayer, [54] whereas advanced rulings on double tax treaties are not binding for the Danish tax authorities if the foreign tax authorities apply another assessment. [55] If the taxpayer does not agree with the advance ruling, appeal is possible. The taxpayer must pay a small administration fee in the amount of DKK 300 upon the application of the advance ruling. [56]

However, all effects of a binding ruling should be considered carefully before an application is filed. In a number of cases, specific questions related to certain tax planning ideas have prompted the parliament to adopt new anti-avoidance legislation designed to prevent any use of the tax planning idea in question. Furthermore, it must be noted that most binding rulings are published, which may lead to unwanted public attention in more controversial cases, despite the fact that such decisions are made anonymously. [57]

Finally, it should be noted that it is possible to apply for an Advance Pricing Arrangement (APA) pursuant to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) in order to ensure that the tax authorities in two or more jurisdictions have agreed upon the prices and other terms on a group's internal cross-border transactions. The APA procedure will not involve any kind of fees to the Danish tax authorities. [58] Moreover, possible conflicts and uncertainties regarding the interpretation of a tax treaty may be addressed via the mutual agreement procedure (MAP), which is similar to article 25 of the OECD Model Convention on Income and Capital (OECD Model). [59]

5. Approach of Tax Authorities

5.1. Tax system and record retention regulation

The corporate tax has to be paid on account twice a year. No local income taxes, franchise taxes or net wealth taxes are levied on companies or permanent establishments in Denmark. However, companies may also be subject to VAT, real estate taxes, different kinds of excise duties and environmental taxes as well as customs.

Danish group companies, including resident subsidiaries of non-resident companies, permanent establishments located in Denmark and Danish immovable property owned by non-resident companies are subject to the mandatory national tax consolidation rules. [60] For compliance purposes, the ultimate Danish parent company is considered an 'administration company' for the group. [61] Consequently, the administration company manages the payment of the consolidated corporate tax including tax penalties and interests. The administration company and all its 100% (directly and indirectly) owned subsidiaries

54. Cf. Sec. 25(1) of the Tax Administration Act.
55. Cf. Sec. 25(3) of the Tax Administration Act.
56. Cf. Sec. 23 of the Tax Administration Act.
57. Cf. for example the *TDC case* mentioned in section 3.3.
58. The number of APA applications has been constantly quite modest over the last 5 years. In 2012 the Danish Tax Authorities only closed two cases and had by the end of the year 13 pending cases, cf. report of 31 January 2013 (j.nr. 12-0250005) from the Danish Tax Ministry to the Danish Parliament's Tax Committee.
59. The number of MAP applications has increased over the last 5 years. In 2012 the Danish Tax Authorities closed 13 cases and had by the end of the year 76 pending cases, cf. report of 31 January 2013 (j.nr. 12-0250005) from the Danish Tax Ministry to the Danish Parliament's Tax Committee. *See also Philip Noes*, Skat Udland, 2013, issue 1, pp. 16-25.
60. Cf. Sec. 31 of the Corporate Income Tax Act.
61. Cf. Sec. 31(6) of the Corporate Income Tax Act.

are jointly and severally liable for corporate income tax, tax on account, non-levied withholding taxes, tax penalties and interests.

Companies that are subject to Danish taxation have to make a self-assessment and, as a main rule, the tax return has to be filed at the latest 6 months after the end of the income year. [62] If the income year ends between 1 February and 31 March, the tax return must be filed no later than 1 August the same year. If the tax authorities intend to make an adjustment, the company – as a main rule – has to be notified no later than 1 May of the fourth year following the end of the income year in question. [63] However, for transfer pricing adjustments the deadline is 1 May of the sixth year following the end of the income year in question. [64]

5.2. Tax audit regulations

The Danish tax audit regulations are governed by the Tax Administration Act and the Tax Control Act. The collection of taxes and tax audit is taken care of by SKAT, which is an independent national agency responsible for administering and enforcing Demmark's tax laws. SKAT has a special division responsible for large companies ("SKAT Store Selskaber") and companies assigned to this division are: [65]

- companies that are part of a group with a turnover of more than DKK 3 billion on a yearly basis;
- companies that are part of a group with internal/controlled transactions of more than DKK 10 million on a yearly basis;
- financial institutions;
- insurance companies;
- utility companies;
- companies subject to hydrocarbon tax; and
- companies subject to tonnage tax.

In 2007 the Danish tax authorities initiated a project to address the challenges concerning compliance risk management. [66] One of the purposes of the project was to optimize the facilitation of the voluntary compliance by making sure that the compliance obligations are known by the taxpayers, are clearly understood and can be met with relative ease. Further, it was intended to recover lost revenue, deter potential evaders and assure the compliant majority of taxpayers that willful evasion and/or fraud is not tolerated.

In this regard, the Danish tax authorities carried out 22,000 random audits of individuals and businesses for the tax year 2006. 58% of the audited businesses had made correct returns, while 42% contained deviations that to a very large extent could be classified as unintentional errors. Thus, 93% of the

62. Cf. Secs. 1(1) and 4(2) of the Tax Control Act.
63. Cf. Sec. 26(1) of the Tax Administration Act.
64. Cf. Sec. 26(5) of the Tax Administration Act.
65. SKAT's "*Produktionplan 2013*", p. 52.
66. *See* "*Adapting to Changing Circumstances: the Danish Experience with New Compliance Strategies and Treatments 2007-2009*", October 2009.

businesses were found to be "co-players" and 7% to be "opponents". Accordingly, the compliance obligations in Denmark are to a large extent met. [67]

5.2.1. Selection of returns for tax audit

To reduce the tax gap [68] between actual income and theoretical tax liability, the tax authorities have initiated a comprehensive project. [69] The project includes focus areas on individuals, businesses and companies, whereas some of the focus areas are transversal. These transversal focus areas include:

- an increased focus on compliance, resulting in a tax audit of 910 randomly selected companies with less than 250 employees; [70]
- an increased focus on e-trading, including e-trading income moved to foreign hosted websites for the purpose of tax avoidance, and identification and classification of electronic services; [71] and
- an increased focus on dispositions between a company and its majority shareholder, such as access to free goods (e.g. car, housing, boat and hunts), payment of private costs, transactions and sales between the company and its majority shareholder.

The focus of "SKAT Store Selskaber" is primarily on loss-making companies, large corporate groups and multinational companies but targeted focus is also given to specific industries, i.e. the financial sector, oil and gas companies, utility companies, etc.

Due to this increased focus, the tax returns of the 150 largest corporate groups in Denmark are examined with the purpose of clarifying whether these corporate groups pay the correct corporate income tax. It is expected that 40-50 of these corporate groups will be selected for further tax audit during the 2-year term of the project. [72] Further, the tax authorities will, to a larger extent than earlier, react on tax motivated reservations in the auditor's certificate in the financial statement. Tax audits based thereon are randomly selected. The purpose is to give the companies an incentive to amend the tax matters that have motivated the reservations. [73]

The primary current controversies that arise when the tax authorities audit are motivated by the projects initiated and are as follows: [74]

- deductibility of costs incurred in relation to merges and acquisitions, including the deductibility of costs incurred in relation to the acquisition of tax-exempt income/gains and deductibility of transactions and stay-on bonuses, etc.;
- beneficial ownership and withholding taxes on dividends and interests with a primary focus on investments from/through private equity funds and/or conduit companies; and

67. *See* "*Adapting to Changing Circumstances: the Danish Experience with New Compliance Strategies and Treatments 2007-2009*", October 2009.
68. The Danish measurement of the tax gap is a national account approach, *see* "*Adapting to Changing Circumstances: the Danish Experience with New Compliance Strategies and Treatments 2007-2009*", October 2009, pp. 10 and 12.
69. Published as SKAT's "*Produktionplan 2013*".
70. SKAT's "*Produktionplan 2013*", p. 9.
71. SKAT's "*Produktionplan 2013*", p. 18.
72. Cf. SKAT's "*Produktionplan 2013*", p. 54.
73. Cf. SKAT's "*Produktionplan 2013*", p. 31.
74. Cf. SKAT's "*Produktionplan 2013*", p. 56.

- all aspects of transfer pricing issues with a primary focus on loss-making projects, intellectual property, financing and transactions with companies resident in tax havens.

As something new, in 2008 the Danish tax authorities have introduced a tax governance project ("*Styrket samarbejdet med store koncerner (Tax Governance)*", "enhanced relationship"). This project is an experiment according to which some larger corporate groups enter into a formalized and extended cooperation with the tax authorities for the purpose of strengthening the cooperation between the parties.

This cooperation is based on transparency and an open relationship, where the corporate groups on a voluntary basis can present their tax issues. In return, the tax authorities must, as fast as possible, give their opinion on the tax matter in question based on the submitted information. The overall purpose is to ensure that that Danish corporate groups will make a correct tax assessment. It has yet to be seen whether this project will turn out to be fruitful for the tax authorities as well as the participating corporate groups. However, it must be expected that establishing such enhanced relationships may pose challenges. [75]

5.2.2. The tax audit

The various stages of a tax audit may vary from case to case depending on the complexity of the specific case in question and on the taxpayer's willingness to cooperate and provide sufficient information. However, in general, the stages can be depicted as shown in the below timeline (in practice, the order of events may be different and some of the steps may be repeated).

- Selection of tax return
- Retrieval of additional information
- Meeting between the tax authorities and the company
- Visit to the company's premises
- Letter outlining intention to increase the tax payment
- Deadline for appeal (no less than 15 days after the letter is sent without prior consent)
- The tax authorities make their decision
- Possible complaint to a higher administrative authority (e.g. the tax tribunal)
- Possible complaint to the courts

If the tax authorities intend to make an adjustment, the company – as a main rule – has to be notified no later than 1 May of the fourth year following the end of the income year in question. [76] However, for transfer pricing adjustments the deadline is 1 May of the sixth year following the end of the income year in question. [77] The taxpayer always has the right to a hearing before the decision is made. [78]

The Danish tax authorities are an administrative authority and are, therefore, obliged to follow the inquisitorial procedure. The inquisitorial procedure is a legal doctrine according to which an

75. For a discussion of the problems involved in introducing enhanced relationsship in Sweden, *see Robert Påhlsson*, Intertax, 2013, p. 255.
76. Cf. Sec. 26(1) of the Tax Administration Act.
77. Cf. Sec. 26(5) of the Tax Administration Act.
78. Cf. Sec. 19 of the Tax Administration Act.

administrative authority is obliged to obtain all relevant information in a case before a decision is made. Accordingly, the tax authorities must ensure that sufficient information – both factual and legal – is available before a decision is made.

The relevant information may be collected from the taxpayer or from third parties. The tax authorities are obliged to test whether the provided information is correct. If the taxpayer provides incorrect or misleading information or refuses to hand over tax relevant documents it can be sanctioned. [79] *See* section 5.3. for sanctions.

Companies are obliged to provide additional information such as accounting records and other documents of importance for the tax assessment. [80] The tax authorities only have access to information that has a direct importance for the assessment (authentic documentation), i.e. documentation on transactions reflected in the bookkeeping and the financial statement that does not exists in any other form. This does not include information on tax governance, planning, etc. However, it has become routine that the tax authorities ask for the audit protocol. [81] In some situations, the tax authorities can also ask a third person to disclose relevant bookkeeping material. [82] Companies must keep bookkeeping material, annual reports, etc. for 5 years from the end of the income year the material concerns. [83]

The information provided by the taxpayer during an audit benefits from unconditional confidentiality. [84] However, for companies, the tax authorities may publish the following information:

- the taxable income after deduction of losses carried forward;
- the use of losses carried forward in the current income year;
- the current income year's effective tax; and
- the relevant provision(s) according to which the company is taxable in Denmark.

In general, the burden of proof lies with the tax authorities. [85] However, for the purpose of deducting costs, the burden of proof is transferred to the taxpayer. [86] Apart from the documentation requirements, there are no special rules on the burden of proof for transfer pricing adjustments, i.e. a general provision on shifting the burden of proof does not apply in Danish transfer pricing cases. [87] However, if the documentation requirements are not satisfied, the tax authorities are authorized to assess the taxpayer to tax on an estimated basis. Accordingly, the burden of proof is, in practice, transferred to the taxpayer as outcome of a transfer pricing dispute, depending on whether or not the taxpayer has satisfied the documentation requirement.

79. Cf. Sec. 14-18 of the Tax Control Act.
80. Cf. Sec. 6 of the Tax Control Act.
81. Cf. *Finn L. Meyer & Anders Bjørn*, Revision & Regnskabsvæsen, 2011, issue 6, p. 36 et seq.
82. Cf. Sec. 6(3) of the Tax Control Act.
83. Cf. Sec. 6A of the Tax Control Act and Sec. 6(1) of Executive Order no. 593 of 6 December 2006.
84. Cf. Sec. 17(1) of the Tax Administration Act.
85. For more about the burden of proof in Danish tax legislation, *see Erik Olsen*: Beviser i skatteretten – om praktisk bevishåndtering, 2002, and Jane Bolander & Jacob Graff Nielsen in Gerard Meussen (ed.): The Burden of Proof in Tax Law, 2013, pp. 87-105.
86. Cf. e.g. supreme court decision published in U 2004.151 H.
87. Cf. *Jens Wittendorff* in *Jan Pedersen* et al. "Skatteretten 3", 2013, p. 399.

5.3. Penalties and other sanctions

The Danish tax rules contain various penalties and sanctions. In 2012, the Danish legislator introduced increased penalties for non-compliance with transfer pricing documentation requirements. Penalties, interests and other sanctions are not deductible from the tax base. The major penalties and sanctions are as follows:

5.3.1. Late filing sanction

If the tax return is not filed in time or the filed tax return is insufficient, an additional tax is imposed. This additional tax is independent from the company's tax base and is fixed to a daily payment of DKK 200 (maximum DKK 5,000). [88] The additional tax is due from the filling date until the tax return is filed or the insufficient tax return is corrected. As this sanction is not a penalty but an additional tax, the payment is subject to late payment interests, etc.

Even though the additional tax is imposed, the tax authorities have the power to force the filing of the tax return by imposing daily penalties. [89]

5.3.2. Late payment interest and penalties

The payment of corporate tax on account twice a year is made on a special tax account. Also, other periodic taxes such as withheld personal income tax (e.g. on wages), share income tax and VAT are made on the tax account.

Interest is imposed if the balance on the account is negative by more than DKK 5,000. This interest consists of a fixed interest rate of 0.7% (day-to-day interest) for each month and a variable interest rate regulated on a yearly basis. [90] Due to the current interest level on the financial market, the variable interest is 0.1% (2014), i.e. the total interest is 0.8% for each month.

If the tax assessment leads to an additional payment of tax, a penalty is imposed. The penalty amounts to 4.6% of the tax due (for the income year 2014).

5.3.3. Sanctions and penalties for non-filing or non-cooperation

The sanctions and penalties are increased in situations where a company, by intent or gross negligence, does not file a tax return, provides incorrect or misleading information for the tax assessment, avoids notification of any changes or mistakes on the preprinted tax assessment of income tax or refuses to hand over tax relevant documents. [91] Companies can become criminally liable for such non-filing, incorrect or misleading filing or non-cooperation. [92]

The amount of the penalty is at the discretion of the tax authorities and the tax authorities must consider the individual situation of the company. However, the size of the penalty depends on the degree of fault and the size of the tax avoided due to the non-filing, incorrect or misleading filing or non-cooperation. The penalties imposed can be divided into the following categories: [93]

88. Cf. Sec. 5(1) of the Tax Control Act.
89. Cf. Sec. 5(2) of the Tax Control Act.
90 Cf. Sec. 7 of the Act of Collection of Tax.
91. Cf. Secs. 14-17 of the Tax Control Act.
92. Cf. Sec. 18 of the Tax Control Act.
93. For additional information on penalties with respect to transfer pricing, *see* section 5.3.4.

Degree of fault	Avoided tax payment	Penalty
Gross negligence	Less than DKK 60,000	50% of the avoided tax payment
Gross negligence	More than DKK 60,000	100% of the avoided payment
Intent	Less than DKK 60,000	100% of the avoided payment
Intent	More than DKK 60,000	200% of the avoided payment

Generally, the company's management is not liable for obligations raised against the company. However, if the company acts fraudulently or with gross negligence, the corporate veil may be lifted if such actions are considered to be made by the management. This also includes tax avoidance, i.e. the company's directors may be liable for tax fraud made by the company and, therefore, be imposed penalties and/or imprisonment. However, this only occurs in rare situations and it is a requirement that a basis of liability exits. [94]

5.3.4. Non-compliance with transfer pricing documentation rules

International corporate groups with cross-border activities between their Danish and foreign subsidiaries and permanent establishments are on the radar of the Danish tax auditors. In recent years, the Danish Ministry of Taxation has introduced additional penalty and transfer pricing documentation requirements. The transfer pricing requirements for compliance purposes consist of a duty to disclose all material facts and a documentation requirement. [95] Due to this, the transfer pricing tax risk during a tax audit can be regarded as high.

The duty of disclosure entails that a Danish company must inform the tax authorities about controlled transactions when filling the tax return. [96] If the company does not disclose the required information in time, a daily additional tax of DKK 200 (maximum DKK 5,000) is imposed. [97]

Further, a Danish company must prepare and keep transfer pricing documentation. The documentation must include a description of the intercompany transactions. Furthermore, the documents must demonstrate that these intercompany transactions follow the arm's length principle as set out in the Danish transfer pricing requirements and are in accordance with the recommendations set out in the OECD Guidelines. [98]

On request by the Danish tax authorities, the transfer pricing documentation must be handed over. If – 60 days after the request – the transfer pricing documentation is missing or is significantly insufficient, penalties may be imposed. The penalties for non-compliance of the documentation requirement consist

94. This follows from the traditional principle of fault (culpa) applicable in Danish law, ctf. UfR 1981.473 H, UfR 1985.209 H and UfR 1985.377 H (Supreme Court decisions).
95. Cf. Sec. 3B of the Tax Control Act. Details on the documentation requirements are set out in executive order no. 42 of 24 January 2006.
96. Cf. Sec. 3B of the Tax Control Act. (The applicable tax return form is form 05.021).
97. Cf. Sec. 5(1) of the Tax Control Act.
98. Cf. Sec. 3B(5) of the Tax Control Act.

of a fixed penalty of DKK 250,000 + 10% of the avoided tax due to non-compliance with the arm's length principle. The fixed penalty is reduced to DKK 125,000 if sufficient documentation is later provided.

For smaller corporate groups, the documentation requirements are less restrictive as less information is required. [99]

If, by intent or gross negligence, incorrect or misleading information has been given for the purposes of qualifying the group as covered by the less restrictive documentation requirements, a penalty may be imposed. [100] The penalty will be the larger of:

- 0.5% of the revenue up to a revenue of DKK 500 million, 0.1% of the revenue in excess of DKK 500 million up to DKK 1 billion and 0.05% in excess of DKK 1 billion; or
- DKK 250,000 up to 50 employees plus DKK 250,000 for each additional 50 employees up to a total of 500 employees, as the penalty amount to DKK 2.5 million in excess of 500 employees.

5.3.5. Additional VAT and payroll tax sanctions

There is no general payroll tax. However, companies carrying on certain activities exempt from VAT are liable to the payroll tax. The payroll tax is neither creditable against other taxes nor deductible from income.

The liability to pay payroll tax includes among other things the following activities:

- health care;
- administration of immovable property;
- financial activities, including insurance and reinsurance;
- gambling;
- activities of travel agents;
- importation and publishing of newspapers; and
- passenger transport directly to or from a foreign destination.

Companies liable to the payroll tax must register, but only if the taxable base exceeds DKK 80,000. The taxable base is the payroll in respect of activities within the scope of the tax. For publishers or importers of newspapers, however, the taxable base is the turnover of newspapers.

In respect to VAT and payroll tax, the tax authorities must ensure that the payment is stated and estimated correctly. If necessary, the tax authorities may undertake control of the premises used by the company. The company must give the tax authorities access to the premises and disclose the books, financial documents and correspondence with customers, etc., whether the information is kept on paper or electronicly.

Upon non-cooperation, penalties may be imposed.

99. Cf. Sec. 3 B(6) of the Tax Control Act.
100. Cf. Sec. 3 B(6) of the Tax Control Act.

5.4. Amnesty

On 8 May 2012, a provisional amnesty scheme was enacted. The scheme only applied for declarations received by the Danish tax authorities no later than 30 June 2013. The scheme applied for Danish taxpayers – individual and corporate – that failed to declare deposits in accounts or assets deposited in foreign banks, etc. Additionally, the scheme only applied to undisclosed funds located in countries from which the Danish tax authorities could not obtain information under a tax treaty in force on 1 January 2008.

The possibility of voluntary declaration entailed a reduced penalty – not exceeding 60% of the tax evaded plus incurred interests – and without the risk of imprisonment. Further, any self-declaration under the scheme was processed administratively and, thus, without contacting the police or courts of law and without publicity.

5.5. Specific tax rules creating risk or administrative challenges

Even though many Danish tax provisions entail complexity and may lack sufficient clarity, some of Denmark's numerous specific anti-avoidance rules (SAAR's) seem especially capable of creating tax risks and/or administrative challenges. Below, we have briefly described some of the SAAR's having a cross-border focus. [101]

Denmark has specific transfer pricing legislation in place. [102] This legislation applies in controlled transactions and sets forth the arm's length principle, which should be interpreted in line with the OECD Guidelines. Moreover, certain information and documentation requirements should be met. [103] Issues related to transfer pricing are often perceived to entail significant risks by Danish corporate groups with international activities. [104]

In general, the deductibility of interest expenses may be restricted under three sets of rules for corporate taxpayers: the thin capitalization test, the asset test and the EBIT test. [105] A company is thinly capitalized if the debt-to-equity ratio exceeds 4:1, provided that the controlled debt exceeds DKK 10 million. If a company is considered thinly capitalized, interest expenses and capital losses, on the part of the controlled debt that should have been converted to equity to avoid the limitation, are not deductible. However, if the company is able to substantiate that similar financing could have been obtained without security from other group companies, the company will be allowed to deduct interest expenses even though the 4:1 ratio is exceeded. Under the asset test, net financing expenses may be deducted only if the net expenses do not exceed a standard rate of 4.2% (2014) of the tax base of certain qualifying assets. According to the EBIT test, net financing expenses may not exceed 80% of earnings before interest and tax. Both the asset test and the EBIT test only apply to net financing expenses exceeding DKK 21.3 million (2014). The two limitations apply to all kinds of debt – not only controlled debt.

According to the Danish CFC regime, a Danish company is liable to tax on the income of a Danish or foreign subsidiary or a foreign permanent establishment if: (i) the subsidiary is controlled by the affiliated group of companies, (ii) the tainted income of the subsidiary or the permanent establishment amounts

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101. For a more thorough description, *see Jakob Bundgaard & Peter Koerver Schmidt*: IFA Cahiers du droit fiscal international, 2010, vol. 95 a, pp. 261-279 (Danish branch report).
102. Cf. Sec. 2 of the Tax Assessment Act.
103. Cf. Sec. 3 B of the Tax Control Act.
104. Cf. *Christian Plesner Rossing* et al., Revision & Regnskabsvæsen, 2012, issue 5, p. 62 et seq.
105 Cf. Secs. 11, 11 B and 11 C of the Corporate Tax Act.

to more than 50% of the total taxable income and (iii) the financial assets of the subsidiary or permanent establishment exceed 10% of total assets. [106] If the CFC rules apply, the Danish parent company should include the total income of the subsidiary or permanent establishment in its own income. A tax credit is granted for taxes paid by the subsidiary or permanent establishment.

Denmark has introduced rules on hybrid and reverse hybrid entities, which entail that the domestic tax treatment in some situations depends on the tax treatment in other jurisdictions. Accordingly, if a company or association should be treated as a transparent entity according to the tax rules of a foreign state, with the effect that the company's income should be included in the income of an affiliated company in this foreign state, the company should – if certain conditions apply – be reclassified as a transparent entity for Danish tax purposes. [107] Conversely, certain tax transparent entities should be reclassified as separate taxable entities if more than 50% of the shares or voting rights are held directly by foreign investors and the tax domicile of such foreign investors is in a country in which the Danish entity is treated as a taxable entity or in a non-EU Member State which does not have a tax treaty with Denmark. [108] Moreover, cross-border tax arbitrage by way of using hybrid financial instruments has been curbed inbound and outbound. [109]

Finally, it should be mentioned that Denmark may impose withholding tax on outbound royalties, dividends and interest. [110] Concerning outbound dividends, a foreign corporate entity is subject to limited Danish tax liability, unless the entity holds at least 10% of the share capital, provided that Denmark must reduce or exempt taxation under a tax treaty or the Parent-Subsidiary Directive. With respect to outbound interest, a foreign entity is, in general, subject to Danish limited tax liability if the interest relates to controlled debt, provided that Denmark does not have to exempt or reduce taxation under a tax treaty or the Interest and Royalties Directive. [111] Under most of Denmark's tax treaties as well as the Interest and Royalties Directive it is a condition for reduction/elimination of the taxation at source that the recipient is the beneficial owner. The Danish tax authorities have taken on a very aggressive approach with respect to the interpretation of the beneficial ownership requirement and currently several cases concerning Danish withholding tax on dividends and interest are pending in the administrative system as well as before the courts. [112]

6. Tax Risk Management in the Global Environment

It is apparent that cross-border transactions and activities are subject to increased tax risks. Part of the explanation might be that the value chains in multinational groups have become more complex and that national tax legislations have struggled to keep up with this development. Furthermore, an increasing battle among states over tax revenues seems to be taking place, resulting in a higher degree of aggressiveness from tax authorities in multiple jurisdictions. There has been an increase in tax audits among larger corporate groups, an increase in adjustments of the taxable income and an increase in fines applicable if companies are non-compliant. From the perspective of businesses operating in

106. Cf. Sec. 32 of the Corporate Tax Act.
107. Cf. Sec. 2 A of the Corporation Tax Act.
108. Cf. Sec. 2 C of the Corporation Tax Act.
109. Cf. Secs. 2 B and 13 of the Corporation Tax Act.
110. Cf. Sec. 2(1)(c), Sec. 2(1)(d) and Sec. 2(1)(g).
111. A number of exceptions exist.
112. For an overview, *see* Hans Severin Hansen, Lasse Esbjerg Christensen, and Anders Endicott Pedersen, Danish "Beneficial Owner" Cases – A Status Report, Bulletin for International Taxation, 2013 (Volume 67), No. 4/5, pp. 192-199.

Denmark and carrying out inbound or outbound investments, the increased tax risks have significant implications.

From the perspective of some foreign investors, significant tax risk and uncertainty are not desirable and may lead to a decision where Denmark is not chosen as a jurisdiction to invest in. However, the authors only have anecdotal evidence of such behavior. Our practical experience does not, in general, support such a conclusion with respect to corporate taxpayers. Moreover, the described tax risks are a consequence of the efforts of legislative bodies and tax authorities in multiple jurisdictions whereby the risk constitutes a global pattern which is not limited to domestic Danish tax issues.

In dealing with cross-border transactions, the Danish tax authorities have followed a strategy whereby several types of transactions have been identified as of particular interest. As a consequence, cases of a similar nature have been initiated against several multinational enterprises.

Moreover, the Danish tax authorities have increased the cooperation with tax authorities in other jurisdictions. Denmark has agreed to around 40 Tax Information Exchange Agreements (as per March 2014) and Denmark actively exchanges information according to EU law and conventions. The Danish tax authorities have not yet been part of a joint audit.

Cross-border issues have been on top of the agenda of the Danish tax authorities for a number of years. Particular issues of interest comprise transfer pricing issues in any form which has led to a significant number of adjustments of the taxable income. Most recently Danish tax authorities have increased the scrutiny on transfer pricing issues related to business restructurings, transfer and use of intangible assets and intra group financing, including financial guarantees and performance guarantees.

Since 2007, the Danish tax authorities have analysed all payments related to cross-border private equity buyouts. This has resulted in a number of tax cases regarding withholding tax on dividends and interest payments, where the notion of beneficial ownership plays an important role. Moreover, the efforts have resulted in a number of amendments to the Danish tax legislation targeting the private equity industry and multinational enterprises.

Not only outbound payments are being scrutinized but also inbound dividend payments are carefully reviewed to determine whether the relevant requirements under the participation exemption regime are actually fulfilled.

As a consequence of the increased tax complexity, an increased use of tax risk management tools is seen in Danish companies. Moreover, there is also an increased use of instruments such as MAPs, APAs, binding rulings and defence files to address the risks.

7. Future Developments and Expected Implications Related to Changed Approach to Risk Management

In recent years, tax governance and tax risk management have moved up the corporate agenda in Denmark. Companies pay more attention to tax matters. Tax governance documents are increasingly made publicly available by large corporate groups. In-house tax departments are built up to become stronger and larger and are becoming increasingly professionalized. Tax policies and tax strategies are being prepared and given priority by top management.

It is hard to see any real benefits to the businesses of an increased regulatory focus. However, it may be a consequence of this increase in focus that businesses will be able to document any given transaction better and, therefore, may be in a position to envision fully the operations and perhaps identify optimization possibilities. On the other hand, costs have increased with respect to the increased burden on compliance. This is particularly emphasized with regard to transfer pricing documentation. [113]

There are no signs of future strengthening of the existing general anti-avoidance rules (GAAR's) in Denmark. It seems that the existing anti-avoidance legislation in combination with the substance-over-form doctrine (based on case law) constitutes a rather solid tool for the tax authorities.

Generally speaking, there are no obvious signs of an increased involvement of third parties in corporate tax matters in Denmark. However, auditors should attest the validity of the transfer pricing documentation. This is a consequence of recent changes in the transfer pricing legislation, which was based on general observations on non-complicance among corporate taxpayers.

Moreover, advisors and members of management teams are seen to be involved in certain cases where the Danish tax authorities claim that advisors or members of management teams may be liable with respect to unpaid taxes. The final outcome of this tendency remains to be seen.

Tax authorities have been rather aggressive in recent years. Moreover, the political and administrative rhetoric has been very harsh on multinational enterprises and private equity funds. A recent initiative is the enactment of a database revealing specific tax information from identified corporate taxpayers (among the public referred to as the "pillory"). [114] There is no legal effect of this initiative. The official objective is to create more openness with respect to the tax payments of corporate taxpayers. [115] Another initiative which was repealed would have allowed the tax authorities access to all available data, so-called "data mirroring". [116] However, very recent scandals in the tax administration may lead to a less aggressive attitude and rhetoric going forward. [117]

113. For additional information on transfer pricing documentation requirements, *see* section 5.3.4.
114. *See also* section 3.3.
115. Cf. the ordinary preparatory remarks to bill L 173 (2011/2012). The information to be published is: 1) the size of the company's taxable income, 2) the company's utilization of tax losses carried-forward from previous income years and 3) the size of company's actual tax payment in the income year in question.
116. Concerning the repeal of the draft bill, *see* press release from the Ministry of Taxation dated 15 November 2010.
117. The tax authorities' control and collection methods have received severe criticism from the "Head of Citizen Matters and Legal Certainty", cf. report of 26 June 2013.