



Danish Cultural contribution – A Digital Service Tax in disguise

The Danish government has, in line with the Danish Media Agreement for 2022-2025 (“Medieaftale for 2022-2025: Den demokratiske samtale skal styrkes”), released a bill regarding Danish Cultural Contribution. The following provides a high-level overview of the draft bill.

Background and purpose

The stated purpose of the bill is to bolster Danish content by economically supporting the production of Danish films, series, and documentaries in order to ensure that Danish citizens have access to original, locally produced content of high quality in Danish – also in the future. The bill introduces a Danish cultural contribution on turnover targeted certain providers of streaming services.

Scope

The bill applies to *Media Service Providers* which provides *on demand-audiovisual media services*, i.e., streaming service providers, established in Denmark or another EU-member state if content *targets audience in Denmark*. Whether content *targets audience in Denmark* should be interpreted in line with the 2010/13/EU, Audiovisual Media Services Directive ("**AVMS-directive**"), i.e., this should be determined based on whether:

- advertising or other promoting measures are specifically targeted at customers in Denmark;
- main language is Danish; *and*
- content or commercial communication is specifically targeted a Danish audience.

The following is exempt from the scope of the bill:

- *Media Service Providers* which are not established in an EU member state;
- *Media Service Providers* with less than DKK 15 million in annual turnover; *and*
- *Media Service Providers* with a small Danish audience (less than 1% of the total number of subscriptions).

Main elements

The cultural contribution is structured such that:

- All providers of on demand streaming services targeting a Danish audience should pay 2% of their *Danish turnover*.
- Providers of on demand streaming services, for which less than 5% of their turnover in Denmark is used to produce Danish content, should in addition to the above, pay 3% of their *Danish turnover*. The cultural contribution for these providers will therefore be a total of 5% of their *Danish turnover*.

The calculation of the *Danish turnover* which the cultural contribution should be based on, is described in more detail in the bill, but is limited to include turnover in Denmark and excludes turnover from television channels, live sports- and news channels as well as pure distribution of other *Media Service Providers*, where the distributor have no editorial responsibility.

The cultural contribution will be a part of the already established Public Service-pool and the movie support-pool. The *Media Service Providers* which contribute to these pools can apply for support to the production of *new Danish audiovisual content*.

Such new Danish audiovisual content is broadly defined and includes content within the genres of movies, series, and documentary independent of sub-category, e.g., reality, comedy, or drama, as long as the language is at least 75% in Danish and fulfils at least one of the following:

- More than half of the budget is spent in Denmark;
- Filming takes place physically in Denmark; *or*
- The production is performed by a Danish established production company, or the main creative or technical roles is performed by individual established or resident in Denmark.

Reporting obligations and sanctions for non-compliance

The bill introduces an obligation to submit the calculation of the *Danish turnover* subject to the cultural contribution to the The Agency for Culture and Palaces (Slots- og kulturstyrelsen), accompanied by a statement from an auditor. In case of non-compliance sanctions will be imposed for both non-compliance with the reporting obligation and the obligation to pay the cultural contribution.

Is the cultural contribution a tax?

We have previously assessed whether the cultural contribution should be considered a tax. The specific details on the design of the cultural contribution provided in the bill does not change the conclusion that the cultural contribution should in fact be considered a tax for the following reasons:

- The payment of the cultural contribution is compulsory for *Media service providers*.
- The payment is made to the Danish state. In this context it does not make any difference that the levy will not finance general public needs but instead be included in a specific pool of funds.
- There is no corresponding benefit for the payor. In this context it does not make any difference if the *Media service providers* in principle can apply to take part in the pool of funds on equal footing with other applicants.

Further, it could be argued that the cultural contribution is a so-called Digital Service Tax ("**DST**"), since

1. the cultural contribution should be considered a tax (see above);

2. the tax is levied on turnover from streaming services provided to Danish customers; *and*
3. the main payors of the tax are large digital companies.

The bill explicitly mentions the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy and it is concluded that the cultural contribution is not in conflict with this OECD-agreement. We do, however, consider the cultural contribution to counteract the intentions established in relation to the negotiations of the multilateral convention, since Denmark has committed not to introduce a DST or a similar measure.