MINISTRY OF FOREIGN AFFAIRS
OF DENMARK
Invest in Denmark

2019

FACTS ABOUT TAXATION IN DENMARK

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To avoid double taxation issues, Denmark has entered a comprehensive network of double taxation treaties with more than 80 countries.

Denmark has a favourable tax climate with a corporate tax rate of 22%, an extensive network of tax treaties and attractive tax rules for expatriates. Other tax incentives include full deduction of patents and know-how in the year of acquisition and the possibility to deduct R&D expenses. Should R&D costs result in tax losses, companies are entitled to a cash reimbursement of 22% of losses related to those costs – up to a maximum tax value of DKK 25 million.

If these beneficial conditions have raised your interest, read on for a brief introduction to the Danish tax regime in its entirety.

CORPORATE TAXATION

Danish corporate entities and foreign companies that are permanently established or have real estate in Denmark are subject to a corporate tax rate of 22% on net corporate income.

Dividends received from a subsidiary are generally tax exempt, as long as the requirements for participation exemption are met (see the section on outgoing dividends). Outbound dividend distributions may be distributed without withholding taxes if the recipient is the beneficial owner and eligible for benefits, according to the EU Parent Subsidiary Directive or a double taxation treaty.

Furthermore, as a supplement to the normal corporate tax regime, a lenient tonnage regime applies to shipping activities in Denmark.

TAX LIABILITY OF CORPORATE ENTITIES

All companies with limited liability registered in Denmark – such as A/S (public limited liability company), ApS (private limited liability company) and IVS (private limited liability start-up company with limited corporate requirements and certain dividend restrictions) – are subject to corporate taxation. Note, however, that the Danish government recently voted to phase out the IVS entity and lower the minimum share capital required for an ApS. A transitional two-year period has been suggested to allow current IVS entities sufficient time to meet the minimum share capital requirements for an ApS.

Foreign companies and European companies (SE Company) are also subject to Danish corporate tax if their effective place of management is in Denmark or if they conduct business activities through a permanent establishment or real property in Denmark.

In most cases, partnerships are transparent for Danish corporate tax purposes. This means only the partners/individuals are subject to tax and not the partnership as such. Other specific entities, such as commercial foundations, may also be subject to Danish tax.

FULL OR LIMITED TAX LIABILITY

The Danish corporate income tax system distinguishes between resident and non-resident entities.

Resident companies are subject to full taxation according to a modified territorial principle, which means that all income derived from Denmark is subject to Danish taxation. A corporate entity is resident in Denmark if it is registered with the Danish Business Authority or if its effective place of management is located in Denmark, in which case the location of the day-to-day management is normally the determining factor.

Foreign companies with a permanent establishment in Denmark are subject to pay limited tax on income derived from the permanent establishment, as defined under article 5 of the OECD Model Tax Convention. Income and capital gains are generally only taxable if the income/asset is attributable to a permanent establishment in Denmark.

Certain other types of income from Danish sources, such as real estate, are also subject to limited tax liability. Capital gains incurred by corporations due to disposal of immovable property in Denmark are always taxable.

The transfer of assets out of a Danish permanent establishment is, as a general rule, deemed disposal of all assets and liabilities at fair market value, including recapture of depreciation. This applies to inventory, machinery and equipment, intellectual property, financial assets/liabilities etc.

From a Danish corporate tax perspective, the tax treatment of a permanent establishment and limited liability company is similar.

PERMANENT ESTABLISHMENT VS. COMPANY

From a Danish corporate tax perspective, the tax treatment of a permanent establishment and limited liability company is similar.

Generally, a representation office is not subject to Danish corporate taxation and, as a rule, is not required to register for tax purposes. However, registration for other purposes may be required. To avoid being deemed a permanent establishment, the activities performed by a representation office may only be preparatory and auxiliary in nature.

OUTBOUND DIVIDENDS

A Danish company may distribute dividends to a foreign recipient without withholding tax.

A Danish company may distribute dividends to a foreign recipient without withholding tax subject to the following conditions:

- The shares in the distributing company qualify as subsidiary shares[1] or group shares[2] (i.e. participation exemption).
- And the recipient is the beneficial owner and eligible to obtain benefits, according to the EU Parent Subsidiary Directive or the relevant double taxation treaty.

Accordingly, most foreign companies may receive tax-exempt dividends from a Danish subsidiary, providing these conditions are met.

In 2015, Denmark introduced an anti-avoidance provision (GAAR), which does not grant the benefits of the EU Parent Subsidiary Directive (and the EU Interest Royalty and EU Cross Border Merger Directives) and double taxation treaties. GAAR applies if it can be reasonably concluded that obtaining the benefit is one of the principal purposes of the arrangement/structure and that the beneficial owner is not resident in an EU/EEA or double taxation treaty jurisdiction.

On 1 January 2019, a broader GAAR rule came into force, following the implementation of the EU tax avoidance directives (Directive 2016/1164 of 12 July 2016 and Directive 2017/952 of 29 May 2017).

A special anti-avoidance rule is in place to stop shareholders pooling their ownership through a chain of companies in order to qualify for participation exemption as holders of subsidiary or group shares. Furthermore, Denmark has implemented an anti-tax avoidance rule, which involves withholding taxes on outbound dividends. This applies when a Danish entity distributing dividends has received such dividends for distribution from foreign subsidiaries and cannot itself be viewed as the beneficial owner of such dividends.

Certain exemptions apply to European recipients.

Certain investors (e.g. certain sovereign funds) may be eligible for a dividend exemption certificate.

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1 Subsidiary shares are defined as shares where the shareholder owns at least 10% of the nominal share capital of the company.

2 Group shares are defined as shares where the shareholder and the company are subject to mandatory Danish national joint taxation or could opt for Danish international joint taxation. The general requirement for mandatory Danish national joint taxation or for opting for international joint taxation is that the parent company, directly or indirectly, controls more than 50% of the votes of the company.

Otherwise, dividends are subject to 27% withholding tax (a 22% or 15.4% rate may apply at source when paid to Danish corporations). Non-resident corporate shareholders are generally eligible for a 22% dividend tax rate. Furthermore, the general withholding tax may be reduced to 15% under Danish domestic law if:

- The shares in the distributing company do not qualify as subsidiary shares or group shares (i.e. ownership less than 10%).
- The receiving company is resident in a country that has a double taxation treaty or administrative agreement with Denmark, whereby each country is obliged to share information regarding taxation.

All such reductions – as well as reduced dividend withholding tax based on tax treaties – are subject to filing a tax reclaim.

INCOMING DIVIDENDS

Dividends received by a Danish company are generally exempt from tax if the shares in the distributing company qualify as subsidiary shares or group shares. Otherwise, the following applies:

- 70% of dividends received by a Danish company from unlisted portfolio shares (non-group or non-subsidiary shares, i.e. less than 10% ownership) should be included in the taxable income and taxed at the corporate income tax rate of 22%. The effective tax rate is then around 15.4%.
- Dividends received by a Danish company from other shares are fully taxable at the 22% corporate income tax rate.

If the distributing company is registered as a foreign company, then it is a requirement that the distributing company or subsidiary further down in the ownership structure does not deduct dividend distributions from its taxable income.

CAPITAL GAINS

Capital gains on bonds and debts are generally taxed at the 22% corporate tax rate.

Capital gains are generally exempt from tax following the sale of:

- Unlisted shares by Danish corporate shareholders.
- Listed group or subsidiary shares.

A corporate tax rate of 22% is only triggered following the sale of listed non-group or non-subsidiary shares. Such capital gains are taxed annually on a mark-to-market basis. Foreign shareholders are not subject to Danish capital gains tax when selling shares in a Danish company to a third party.

Liquidation proceeds should generally be regarded as tax-exempt capital gains. However, for certain non-qualified shareholders, liquidation proceeds may qualify as taxable dividends if the conditions for exemption are not met (see section on outbound dividends). Certain other anti-avoidance rules apply in connection with intra-group sales of shares.

MANDATORY JOINT TAXATION

International joint taxation with foreign affiliated companies and branches is optional.

All Danish group companies, including the Danish real estate and permanent establishments of foreign group companies, are subject to mandatory joint taxation. The following rules apply:

- Losses in one Danish company may be set off against taxable income in another Danish company or permanent establishment/real estate under the joint taxation group. If a loss in one group company is used by another group company, then the group company that utilises the loss must pay the administrative company (i.e. the head of the joint taxation arrangement) an amount equivalent to the tax saving. The administrative company should then refund the same amount to the loss-making company. Generally, the top parent company is appointed as the administrative company and, thereby, head of the joint taxation arrangement.
- Losses from a Danish permanent establishment can only be offset against income in other affiliated Danish entities, providing the loss is not offset against income in the foreign head office.
- International joint taxation with foreign affiliated companies and branches is optional. However, the decision to form an international consolidation group is binding for a period of 10 years.

Moreover, group companies are jointly and severally liable for tax payments and withholding taxes under the joint taxation scheme.

DEDUCTION AND DEPRECIATION

Business expenses incurred when acquiring, securing and maintaining taxable income are generally deductible. The following **general** conditions apply:

- Interest expenses related to a loan are subject to Danish interest restriction rules (see Other restrictions on interest deductions).
- Machinery and equipment are depreciated on a pool basis using the declining-balance method. The tax payer can generally choose a depreciation rate of 25%. Depreciation of certain assets with a long lifespan, e.g. ships, airplanes, certain infrastructure assets, etc. is reduced to 7-15%.
- Buildings and installations are generally depreciated at a rate of up to 4% using the straight-line method.
- Goodwill and other intangibles may be amortised over seven years using the straight-line method.

However, the acquisition costs of patents and acquired know-how may, as an alternative to the straight-line method, be fully deducted in the year of acquisition.

LOSSES

Losses may be carried forward indefinitely. However, with regard to tax losses realised in previous income years, the annual amount deductible is limited to DKK 8,385 million (2019) on a consolidated level. The remaining losses carried forward may only reduce the residual income by up to 60%.

Loss-making companies may receive a cash tax credit for losses related to R&D costs.

CASH CREDIT FOR R&D LOSSES

Loss-making companies may receive a cash tax credit for losses related to R&D costs. The cash credit amount is based on a maximum tax value of DKK 25 million. This means companies with R&D activities can receive a payment equal to the tax value, i.e. 22% (DKK 5.5 million) of the loss-making R&D costs.

Danish taxpayers are also entitled to deduct R&D expenses. This deduction will gradually increase from 100% to 110% as follows:

Income year	Rate of deduction
2019	101.5%
2020	103%
2021-2022	105%
2023-2025	108%
2026 and onwards	110%

TRANSFER TAXES

Denmark does not tax net wealth or worth. Furthermore, there are no stamp duties or transfer tax on the transfer of shares, bonds, securities, intangibles and capital nor any capital duty on the formation and expansion of company capital.

When transferring immovable property, a registration levy of DKK 1,660 applies plus 0.6% of the transfer amount. A levy also applies to mortgage agreements concerning immovable property and transfers of vessels and aircraft, including related mortgages.

Denmark levies excise duties on, for example, alcoholic beverages, cars, chocolate, sugar, gasoline, certain insurance policies and tobacco.

Mutual agreement procedures, including advance pricing agreements, are available to resolve or prevent double taxation.

SPECIAL PAYROLL TAXATION

Special payroll taxation applies only to companies that conduct specific VAT-exempt activities and is based on payroll related to employees that carry out work associated with these activities.

Methods and rates of taxation vary according to the type of VAT-exempt activity, such as financial, import and newspaper publishing.

TRANSFER PRICING

Transactions between group companies are considered controlled transactions and are subject to the arm's length principle. Danish law on controlled transactions generally follows the recommendations of the OECD and Transfer Pricing Guidelines. The following conditions apply:

- Larger groups that exceed certain thresholds are required to prepare contemporary transfer pricing documentation which should be finalised by the time of the tax return.
- Taxpayers related to smaller groups are only required to provide partial documentation.
- A specific transfer pricing return must be filed with the tax return, containing information about the types of controlled transactions and related amounts.

Denmark has implemented country-by-country reporting requirements and enforces a specific transfer pricing penalty regime.

THIN CAPITALISATION

Thin capitalisation may apply if a group's intercompany debt exceeds DKK 10 million and the debt to equity ratio exceeds 4:1 at the end of the year. Capital losses that are restricted by the thin capitalisation provision may, however, be carried forward and set off against future capital gains in respect of the same debt relationship.

OTHER RESTRICTIONS ON INTEREST DEDUCTIONS

Due to the interest ceiling limitation, Danish entities are only allowed to deduct net financial expenses if they do not exceed the taxable value of the entities' (qualifying) assets multiplied by a standard rate (2.7% for 2019) or the basic amount of DKK 22.3 million (2019). Restricted net financial expenses below the interest ceiling limitation are forfeited.

According to the EBIT restriction, net financial expenses in excess of 80% of the taxable income before financial expenses are not tax deductible in the same year but are eligible for carry forward to future years. However, net financial expenses on a group basis up to DKK 22.3 million (2019) may always be deducted annually (safe harbour).

The EBITDA rule was implemented in Danish tax law with effect from 1 January 2019. According to the EBITDA rule, companies, funds, association and other entities subject to corporate income tax are generally only allowed to deduct exceeding borrowing costs from taxable income by a maximum amount corresponding to 30% of the taxable income before borrowing costs and depreciation and amortisation (EBITDA). The exceeding borrowing costs as well as EBITDA should generally be calculated on a consolidated basis for the jointly taxed group. It should be noted that, according to the new rules, net financial expenses of approx. DKK 22.3 million are always deductible (calculated on joint taxation basis).

Exceeding borrowing costs are generally calculated as the sum of net financial expenses under the interest ceiling rule after potential interest limitations under the Danish thin capitalisation and interest ceiling rules.

Reduced borrowing costs may be carried forward without any time limitation, and unused interest deductibility capacity may be carried forward for five years.

The EBITDA rule was implemented in Danish tax law with effect from 1 January 2019.

CONTROLLED FOREIGN COMPANY TAXATION (CFC TAXATION)

Mandatory social security contributions in Denmark consist of six contributions, which are all paid to the Supplementary Labour Market Pension Fund (ATP) at a total cost of approximately EUR 1,000 per employee a year.

A Danish resident parent company is liable to pay tax on the income of a non-resident subsidiary or a foreign permanent establishment if:

- The shares in the subsidiary qualify as group shares.
- The business of the subsidiary or permanent establishment is mainly of a financial nature, i.e.
  - More than 50% of its total taxable income consists of net interest income, dividends, commissions, net capital gains on shares, payments and capital gains with respect to intellectual property rights, income from leasing or insurance activities, etc.
  - More than 10% of its assets are of a financial nature.

The Danish resident parent company's taxable income (equal to percentage of ownership) should include the entire taxable income, calculated according to Danish tax principles. Credit relief for foreign taxes paid may, however, be claimed.

Please note, as mentioned above, the Danish Ministry of Taxation has published a bill on the amendment of the Danish CFC regime with the purpose of implementing EU's tax avoidance directives. The bill may still undergo amendments.

SOCIAL SECURITY CONTRIBUTIONS

Unless an employee is covered by social security in another country according to Title II in EC Regulation No. 883/2004 or any other agreement, Danish social security applies to the employer and employee when work is performed exclusively in Denmark. Danish social security contributions are calculated on the basis of working hours.

If the employer chooses to make use of collective bargaining, this may include additional costs for the employer and employee, e.g. additional pension insurance. Such additional costs are not covered by Danish social security.

EMPLOYERS

Mandatory social security contributions in Denmark consist of six contributions, which are all paid to the Supplementary Labour Market Pension Fund (ATP) at a total cost of approximately EUR 1,000 per employee a year.

In addition, employers are obliged to take out industrial injury insurance with an occupational insurance company, in compliance with the Workers' Compensation Act. The cost of this insurance depends on the trade or industry and the category of risk and may vary between EUR 400 and EUR 650 per employee per year.

EMPLOYEES

Employees are liable to a supplementary labour market pension contribution of around EUR 153 a year for full-time employment. The employer is obliged to withhold and pay the employee contribution to ATP.

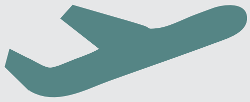
SPECIALIST SUPPORT FOR SETTING UP IN DENMARK

Invest in Denmark provides all the support you need for locating your business in Denmark. So, if you are considering setting up or expanding your activities in Denmark, make us your first stop.

Our specialised, international staff can advise you on every aspect of locating in Denmark. Not only when you set up, but also as your business grows.

Our tailor-made solutions include connecting companies with key local contacts, arranging fact-finding tours and providing comprehensive benchmark analyses. We make sense of local legislation and the advantages of locating in Denmark – all free of charge and fully confidential.

DENMARK: BEST COUNTRY FOR BUSINESS



Gateway to the Nordics

Four international airports serve tourism, business and cargo. Copenhagen Airport has direct international routes to more than 177 destinations, making it by far the largest airport and logistics hub in the Nordics.

ONE OF THE MOST DIGITAL COUNTRIES IN THE EU

Digital Economy and Society Index (2019)

USD 56,307
Per capita GDP
(2017)

One of the most flexible labour markets in the world
IMD (2018)

#1 in Europe for ease of doing business
The World Bank (2012-2019)

22%
corporate tax

Denmark aims to be powered entirely by renewable sources by 2050

#2 in the world on work-life balance
OECD Better Life Index (2018)

Language

9 out of 10 people speak English and 6 out of 10 speak German.

Strong infrastructure

Denmark has a strong infrastructure, including four international airports, sea ports, bridges and an integrated railway system. Together, they enable easy distribution of goods and services to the Nordic markets.

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OUR GLOBAL PRESENCE

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