

KROMANN REUMERT



Tax Law

GUIDE TO TAXATION IN DENMARK
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The Kromann Reumert *Tax Law Group*

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1. The Danish Tax System

1.1 TYPES OF TAXES

The Danish tax system comprises of direct and indirect taxes. Direct taxes include income tax and property tax, while the principal indirect taxes are value added tax (VAT), customs, green taxes and excise duties.

The Danish income tax for companies is a flat rate corporation tax of 25 percent.

The income taxes for individuals are state tax, municipal tax, health tax and church tax. The state tax is a progressive tax divided into bottom-bracket and top-bracket tax rates. The municipal, health, and church taxes are calculated on a flat rate basis. The church tax is payable by members of the Danish National Evangelical Lutheran Church (*Folkekirken*). Individuals also have to make contributions to a labour market pension fund.

Aside from taxes on personal income, Denmark applies taxes to share income and capital gains on, for example, real property, and other income from investments.

The Danish government levies a number of other taxes, such as, for example, property taxes, property value tax, taxes on gifts and inheritance, payroll tax, special gas and oil taxes and tonnage taxes – as described below.

On 28 May 2009, the Danish Parliament approved a major reform to Danish tax law (entitled *Forårspakke 2.0* or in English, Spring Package 2.0). The primary purpose of the tax reform was to reduce the taxation of employment income, which, for Denmark, is still set at one of the highest levels in the world, with a marginal tax rate of 56.5 percent including social contributions. However,

the tax reform also has significant tax consequences for Danish businesses.

1.2 MAIN SOURCES OF LAW

The main source of Danish tax law is the 1922 statute on income taxation to the state (*Statsskatteloven*) which includes the fundamental principles of Danish tax law. However, over the last 88 years, different Danish governments have introduced numerous acts governing tax matters, which today make taxation in Denmark a particularly complex matter.

1.3 THE DANISH TAX ADMINISTRATION STRUCTURE

In Denmark, taxes are administered through the Danish Tax and Customs Administration (*SKAT*), which was formed on 1 November 2005 following a merger between the municipal and state tax administrations. The Danish Tax and Customs Administration is a single administrative body with a number of units located across the country. It employs around 8,000 staff.

Apart from the Ministry of Taxation and the Danish Tax and Customs Administration, the Danish tax authorities include a Tax Council, a National Tax Tribunal and a number of local tax and tax assessment tribunals.

2. Taxation of corporations

Corporations resident in Denmark are liable to pay corporate tax on their worldwide income. However, income from permanent establishments and real property located abroad is not taxable income.

There are two forms of corporations in Denmark – private limited companies (in Danish, *anpartsselskab*, which can be abbreviated to *ApS*), and public limited companies (in Danish, *aktieselskab*, which can be abbreviated to *A/S*).

In addition to Danish corporations, a number of other business entities – including certain other limited liability companies and associations – are subject to corporate taxation in Denmark.

2.1 FILING OF TAX RETURNS AND PAYMENT OF CORPORATION TAXES

As a general rule, the income year for companies is the calendar year. However, companies are also permitted to select an income year that differs from the calendar year. Companies included under joint taxation (see item 2.4) must have the same tax year as the administrative company.

A yearly tax return must be filed with the tax authorities within 6 months following the end of the fiscal year. However, if a company's nominated tax year ends between 1 February and 31 March, its tax return must be filed on or before 1 August in the relevant year.

Companies pay taxes on a current year basis. Taxes are due as account payments on 20 March and 20 November.

2.2 CALCULATION OF INCOME TAXES

2.2.1 THE TAX RATE

Danish corporations are taxed at a flat rate of 25 percent.

2.2.2 TAXABLE INCOME

In general, any income is taxable if it is subject to full tax liability.

As a rule, capital gains are added to the taxable income, as described below.

2.2.2.1 Capital gains on shares

The 2009 tax reform has significantly changed the Danish participation regime with effect from the income year 2010.

The tax reform introduced a distinction between “subsidiary shares”, “group shares” and “portfolio shares”.

“*Subsidiary shares*” are shares where (i) the corporate shareholder owns at least 10 percent of the shares in another company, and (ii) the company is a Danish company subject to corporate tax, or a foreign company where the taxation of any dividends it pays out must be waived or reduced according to the Parent-Subsidiary Directive (Directive 90/435/EEC) or a tax treaty between Denmark and the jurisdiction where the foreign company is a tax resident.

“*Group shares*” are shares where the corporate shareholder and the company are subject to Danish national joint taxation or could elect to be subject to Danish international joint taxation (generally, this requires that the corporate shareholder controls more than 50 percent of the votes in the company).

“*Portfolio shares*” are shares that do not qualify as subsidiary shares or group shares.

Capital gains on subsidiary shares and group shares are generally

exempt from taxation, while capital gains on portfolio shares are generally taxable (at the full corporate tax rate of 25 percent). Further, capital gains on portfolio shares are – as a starting point – taxed annually on a mark-to-market basis. However, corporate taxpayers may opt for taxation on a realization basis in relation to shares that are not traded on a regulated market.

Losses in respect of subsidiary shares and group shares are not deductible. Losses relating to portfolio shares can be deducted from the taxable income. However, if the taxpayer has opted for taxation on a realization basis, losses may only be set off against gains on shares that are taxed on that basis.

The ownership period is no longer decisive for the taxation of capital gains on shares.

Anti-avoidance provisions and a number of transitional rules that apply to shares acquired prior to 2010 have increased the complexity of Danish capital gains taxation.

In order to counter structures where two or more corporate shareholders with shareholdings below the 10 percent threshold pool their shares in a joint holding company (to reach the 10 percent threshold), an anti-avoidance rule has been introduced. According to this rule, subsidiary shares or group shares held by a holding company are for tax purposes deemed to be held by the shareholders of the holding company if the following cumulative conditions are met:

- the primary function of the holding company is to own subsidiary shares and group shares,
- the holding company does not carry out genuine economic business activities in relation to the shareholding,
- more than 50 percent of the shares in the holding company

are – directly or indirectly – owned by Danish resident companies (or a Danish permanent establishment of a foreign company) that would be unable to receive tax-free dividends in case of direct ownership of the shares owned by the holding company, and

- the shares in the holding company are not listed on a regulated market or a multilateral trading facility.

2.2.2.2 Capital gains and bonds, debentures and financial contracts etc.

Companies are subject to tax on all capital gains and losses on bonds, debentures and similar financial instruments, and on debts, irrespective of the currency and the interest rate. Capital gains on futures, options and other financial instruments are also subject to tax.

Structured bonds are generally taxed pursuant to the rules applicable to derivatives. A bond is for Danish tax purposes considered to be structured if the principle in whole or in part is adjusted in accordance with prices or other factors related to securities, goods or other assets.

Capital gains on convertible bonds are, however, treated as capital gains on shares. Also, special rules apply to inter-company debt between affiliated companies.

Following the 2009 tax reform, gains and losses on most types of bonds held by companies are taxed annually on a mark-to-market basis.

2.2.2.3 Capital gains on real property

Capital gains on real property are generally taxable. For certain properties used for business purposes, roll-over relief is available in connection with the sale and re-purchase of real property.

2.2.2.4 Goodwill and intangible rights

Capital gains on goodwill and other intangible rights are taxable income.

2.2.3 DEDUCTIONS AND DEPRECIATION

2.2.3.1 Deductions

Trading losses and interest expenses may be set off against other income and gains.

2.2.3.2 Depreciation

Depreciation on machinery is calculated by pooling the value of all such items and then using the declining-balance method. A company may use a depreciation rate from 0% to 25%. Depreciation cannot be claimed in the year of disposal. Machinery and equipment with a purchase price of less than DKK 12,300 (2010) or an estimated life span of less than 3 years may be fully depreciated in the year of acquisition.

Expenditures relating to the acquisition of computer software may be fully depreciated in the year of acquisition.

Assets used for leasing activities are governed by special rules. A company acquiring machinery and equipment for leasing purposes is not allowed to claim depreciation on leased assets in the acquiring year. In the following year, 50% may be depreciated. The tax authorities may allow the normal depreciation rules to be applied.

Buildings used for production or other business purposes – but not offices – may, as a main rule, be depreciated on a straight-line basis by 4% annually.

Acquired goodwill and other intangible properties such as patents and trademarks may be depreciated by up to one-seventh of their

acquisition value per year. If the right in question allows its owner a period of exclusivity of less than 7 years, the acquired right may be depreciated by the same percentage amount each year, where that annual rate is calculated using the value of the acquisition during the remaining period of exclusivity.

Acquired know-how and patents may be fully deducted in the year of acquisition.

Infrastructure assets for transportation, the storing and distribution of electricity, water, heat, oil, gas and sewage, the transmission of radio and television and telecommunications equipment (except for IT hardware and software), and railway assets or similar may be depreciated by 7%.

For certain ships, planes, railway equipment, heat and electricity production assets, drilling rigs and various hydrocarbon-related assets, the depreciation rate will be reduced gradually from 25% to 15% as follows:

2007:	25%
2008 - 2009:	23%
2010 - 2011:	21%
2012 - 2013:	19%
2014 - 2015:	17%
2016:	15%

Licenses for the exploration and exploitation of oil and gas are to be depreciated over the lifetime of the licenses.

2.2.4 TAX LOSSES

Losses may be carried forward indefinitely. Carry-back is not possible.

The right to set off losses carried forward against other income may disappear or be reduced if more than 50% of the shares in the company have changed ownership since the beginning of the year in which the losses were incurred, or if the company has obtained a remission of debt, composition or similar.

2.2.5 TAXATION OF DIVIDENDS

Dividends received by a Danish parent company from Danish or foreign subsidiaries are generally tax-exempt. However, this tax exemption only covers dividends from subsidiary shares or group shares.

“Subsidiary shares” are shares where (i) the corporate shareholder owns at least 10 percent of the shares in another company, and (ii) the company is a Danish company subject to corporate tax or a foreign company where the taxation of any dividends it pays out must be waived or reduced according to the Parent-Subsidiary Directive or a tax treaty between Denmark and the jurisdiction where the foreign company is a tax resident.

“Group shares” are shares where the corporate shareholder and the company are subject to Danish national joint taxation or could elect to be subject to Danish international joint taxation (generally, this requires that the corporate shareholder controls more than 50 percent of the votes in the company).

Previously, the tax exemption for dividends only applied for companies that had held shares in a subsidiary for a period of at least 12 months, and the dividend was declared during this period. However, following the 2009 tax reform this requirement has been abolished with effect from the tax year 2010.

The exemption also applies to foreign companies with a permanent establishment in Denmark. However, it is a condition that the

company is domiciled within the EU or EEA, in the Faroe Islands or Greenland or in a state that has concluded a tax treaty with Denmark.

The tax exemption does not cover dividends if the company paying such dividends is allowed to deduct the distribution of dividends. However, the distribution of dividends is still tax-exempt if foreign taxation is waived or reduced pursuant to the Parent-Subsidiary Directive and common taxation schemes for parent companies and subsidiaries from different member states.

Dividends received from investment companies are not tax-exempt – see 3.5, below.

2.3 TRANSFER PRICING

The Danish transfer pricing legislation is based on the general principle of arm’s length transactions.

Accordingly, all transactions between connected parties must be concluded on general market terms as if the parties to the transactions were independent entities (transactions must be concluded at “arm’s length”). A “connection” exists between parties if a company or an individual (or a group of affiliated companies or related persons) owns, directly or indirectly, more than 50% of the shares in the relevant company or may exercise more than 50% of the votes in the relevant company.

In order to catch private equity funds and similar arrangements, the definition not only includes companies but also extends to:

- Entities and associations which are fiscally transparent under Danish tax law and which are governed by the rules of corporate law, a corporate agreement or articles of association.
- Entities with joint management.

- Entities that have entered into an agreement regarding the exercise of a joint controlling influence.

The Danish practice in the transfer pricing field is generally in accordance with the OECD Guidelines.

The Danish Parliament has adopted rules on transfer pricing documentation. The legislation states that affiliated companies must provide information in their tax return evidencing the nature and extent of any transactions with associated enterprises. In order to ensure compliance with the arm’s length principle, connected parties are subject to a duty of disclosure (i.e. a duty to provide information in the tax return about the nature and extent of controlled transactions), and a duty to provide documentation (i.e. a duty to prepare written documentation describing how prices and other terms have been fixed).

The duty of disclosure and the duty to provide documentation only apply to companies or similar entities that are subject to the special tonnage tax regime, to the extent that the income of such companies is not covered by the regime.

Further, a general exemption applies to small and medium-sized companies. Such companies are only obliged to prepare transfer pricing documentation in respect of controlled transactions entered into with companies in countries outside the EU or the EEA and with which Denmark has not entered into a tax treaty. Also, a general exemption applies to controlled transactions that are deemed immaterial in respect of either volume or frequency.

The documentation must be in writing and of a nature that can provide the basis for an evaluation as to whether the prices and conditions have been determined at arm’s length. The enterprise must explain which method or methods were used in order to

arrive at the arm’s length price.

Non-compliance with the requirement to provide documentation is punishable by fine, provided that the non-compliance can be characterised as wilful or grossly negligent. Furthermore, companies that have not prepared documentation risk a discretionary assessment of their taxable income.

The tax authorities are afforded the opportunity to commence a taxation case concerning transfer pricing issues for a period of up to 5 years and 4 months after the expiry of the relevant tax year.

The Danish Tax and Customs Administration has recently increased its focus on transfer pricing issues and has decided on a number of major income adjustments based on the transfer pricing rules.

2.4 JOINT TAXATION

According to the Danish joint taxation regime, all Danish group companies and all permanent establishments and real properties in Denmark owned by foreign group companies are automatically taxed on a joint basis. The consolidated taxable income will be calculated as the sum of the taxable income of each group company, irrespective of whether or not the group company is wholly owned or not.

International joint taxation (i.e. joint taxation with foreign group companies) is optional. However, if a group opts for international joint taxation, all foreign group companies as well as all permanent establishments and real property in foreign countries owned by group companies will have to be included in the joint taxation. Therefore, it is not possible to include only some foreign group companies in Danish joint taxation.

If international joint taxation is selected, that choice will be

binding on the group for a period of 10 years. However, a group may choose to terminate international joint taxation prior to the expiry of the 10-year period against taxation of the full amount of losses deducted under the joint taxation.

As part of the joint taxation, a so-called “administrative company” must be appointed. The administrative company must be the Danish group parent company. The main duty of the administrative company is payment of the tax levied on the consolidated taxable income of the group. In return, any other Danish group companies must pay to the administrative company an amount equal to their portion of the tax levied on the consolidated taxable income of the group. Similarly, foreign group companies can pay their portion of the tax levied on the consolidated taxable income of the group to the administrative company, but are not obliged to do so. As a starting point, each group company is only liable for its portion of the tax levied on the consolidated taxable income of the group. However, the administrative company assumes tax liability for the Danish group companies upon receipt of payment of the respective portions of the consolidated taxable income of the group.

Group companies include all companies (with minor exceptions) that qualify as group companies within the meaning of the Danish Corporation Tax Act (*Selskabsskatteloven*).

This means that a company (the subsidiary) is deemed to be part of the same group as another company (the parent company) if the parent company holds the majority of the voting rights in the subsidiary, may appoint or remove a majority of the members of the senior body of the subsidiary, or is able to control the subsidiary in any other way.

2.5 INTRA-GROUP CONTRIBUTIONS

As a general rule, contributions – other than capital contributions

made in connection with increases in share capital, including premiums – are included in the taxable income for the recipients and are non-deductible for the grantors (unless, as an exception, the contribution can be substantiated as a business cost incurred in the interests of the grantor).

However, contributions from a company which is under joint taxation or could have been under joint taxation with the recipient company (see above, under item 2.4) may be received as tax-exempt. On the other hand, the grantor of the contribution cannot deduct the contribution.

Contributions are only tax-exempt if the grantor is directly or indirectly the parent company to the recipient company, or if the grantor and the recipient company have a joint parent company (and are therefore sister companies).

Further, contributions between sister companies are only tax exempt if the grantor could have distributed tax-exempt dividends to the common parent company, see item 2.2.5 above. If the parent company is not a Danish entity, it must be covered by the provisions of the Parent-Subsidiary Directive or by a tax treaty, according to which the Danish taxation of dividends paid to such a foreign company must be waived or reduced.

A contribution is not tax exempt if it can be deducted by an affiliated company outside Denmark or if the grantor is an investment company.

2.6 TERRITORIAL RULES

A company that is either registered with the Danish Commerce and Companies Agency or is effectively managed in Denmark is subject to full tax liability. Effective management is interpreted in accordance with the same principle as the OECD Model Treaty and

generally refers to the place where the day-to-day management decisions are made.

Danish companies are generally subject to taxation on their worldwide income.

However, Danish companies are not subject to taxation on income related to permanent establishments or real property in foreign countries except except (i) in respect of income from the operation of ships or aircraft in international traffic, or (ii) when Denmark has been granted the taxation right by a tax treaty or other international agreement.

Permanent establishments or real property in foreign countries will, however, be included under Danish taxation if the company is part of international joint taxation – see item 2.4. Further, the CFC regime (see item 2.7) applies to permanent establishments of Danish companies and, therefore, a Danish company will be subject to taxation on any taxable income attributable to a permanent establishment in a foreign country, provided that the CFC conditions are met.

A company which is not subject to full tax liability to Denmark may be subject to limited tax liability – see item 2.12 below.

2.7 CFCS – CONTROLLED FINANCE COMPANIES

As from 1 July 2007, the Danish CFC regime for companies was amended substantially in order to bring the Danish rules in line with the principles set out by the European Court of Justice in the *Cadbury Schweppes case (C-196/04)*.

Since July 2007, the CFC regime has been extended to apply not just to foreign companies, but to all subsidiaries meeting a revised CFC test, i.e. irrespective of their tax residency and

irrespective of the taxation actually applied to the subsidiaries.

Companies will only be deemed CFCs if they are (i) controlled by a Danish parent, (ii) have financial income (such as interest, dividends, royalties, and capital gains on shares, debts, and financial instruments etc.) constituting more than half of their total income, and (iii) have financial assets constituting more than 10% of their total assets.

A company’s financial income and financial assets are calculated on a consolidated basis together with any subsidiaries located in the same jurisdiction.

The total income of a CFC will be included in the taxable income of the Danish parent and relief will be granted for tax payments made by the CFC.

Insurance companies, banks and mortgage credit institutes with substantial activities in foreign jurisdictions may apply for exemption from CFC taxation.

The CFC regime also applies to permanent establishments of Danish companies. Therefore, a Danish company will be subject to taxation on any positive CFC income from a permanent establishment in a foreign country, provided that the CFC conditions are met.

The CFC rules do not apply to subsidiaries that are included under international joint taxation or which are investment companies.

2.8 ANTI-AVOIDANCE LEGISLATION

A change of domicile by a Danish company or taxable legal entity will usually be considered as liquidation with the same taxation effect as a sale. A company may move its activities abroad, but to

ensure that there is no tax avoidance, such a transfer is considered a disposal.

2.9 RULES ON THIN CAPITALISATION

The Danish Corporation Tax Act has included rules on thin capitalisation since 1998. However, on 1 June 2007 the Danish Parliament adopted a bill which introduced two new rules limiting the deductibility of interest. These new rules – an interest ceiling and an EBIT (Earnings Before Interest and Taxes) model – supplement the thin capitalisation rules.

The new “interest ceiling” and “EBIT model” took effect from 1 July 2007. Three tests now have to be made in order to determine the actual deductibility of net financing costs:

1. The thin capitalization test
2. The “*interest ceiling*” test
3. The “*EBIT model*” test.

2.9.1 THIN CAPITALISATION

The Danish rules on thin capitalisation apply to Danish legal entities which have debt (debt is defined as the aggregate of controlled debt and third party debt) to Danish or foreign legal entities that either control the Danish entity, are being controlled by the Danish entity, or are under joint “control” together with the Danish entity (“controlled debt”).

Control exists if a company or an individual (or a group of affiliated companies or related persons) owns, directly or indirectly, more than 50% of the shares in the relevant company or may exercise more than 50% of the votes in the relevant company. The definition of “control” also includes:

- Entities and associations that are fiscally transparent under

Danish tax law but are governed by the rules of corporate law, a corporate agreement or articles of association.

- Entities with joint management.
- Entities that have entered into an agreement regarding the exercise of a joint controlling influence.

Controlled debt also includes third party loans which have been guaranteed by the controlling shareholder(s) or its affiliates.

If the debt-equity ratio exceeds 4:1, the interest on the excess part of the controlled debt is not deductible if the controlled debt exceeds DKK 10 million. However, the limitation only applies to that part of the debt which should have been equity in order to avoid the limitation.

As an exception to the main rule, interest can be deducted if the taxpayer is able to show that a similar loan could be obtained from an independent third party without any security from the controlling shareholder(s) or its affiliates.

If the total debt is comprised of controlled debt and debt to an independent third party, the limitation on deductibility will only apply for the interest on the controlled debt.

The interest that cannot be deducted is not requalified as dividends. Therefore, no withholding tax applies for such payments.

2.9.2 INTEREST CEILING

According to the “*interest ceiling*”, net financing costs exceeding a ceiling calculated as a standard rate of return (variable, at present 5% p.a.) on the tax value of the company's assets and exceeding an annual minimum relief of DKK 21,300,000 (adjusted annually) are not deductible. Accordingly, interest (and other financing costs) below the annual minimum relief of DKK 21,300,000 (2010) are always

deductible, unless limited by the existing thin capitalisation rules. *Net financing costs* are defined as the negative sum of interest income and interest expenses, deductible and taxable loan commissions, gains and losses on debt claims and financial contracts (with certain exceptions), the interest element of financial leasing and taxable dividends, taxable capital gains and offset losses on shares. Net financing costs include interest irrespective of whether the interest relates to intra-group debt or external debt.

The *tax value* of the company's assets basically consists of the depreciated value of depreciable assets, the cost base of other assets and carry-forward losses, excluding the value of cash, debt claims, financial contracts and shares.

However, only 20% of the acquisition price for shares in directly owned subsidiaries not subject to joint taxation is included in the tax value, subject to complex adjustment mechanisms. As all Danish group companies are automatically taxed jointly, this provision will in practice only be relevant in relation to foreign subsidiaries.

As part of the substantial 2009 tax reform, this 20% rule will be gradually phased out between 2010 and 2017, thereby effectively rendering financing expenses related to acquisitions of shares in foreign companies as non-deductible.

Calculation of the tax value is made on a consolidated basis for companies that are taxed jointly. Assets contributed by a foreign affiliated company are only included in the tax value if the assets remain in the company for at least two years, unless international joint taxation is opted for.

2.9.3 EBIT MODEL

From 1 July 2007, an “*EBIT model*” has been introduced,

maximising the deductibility of net financing costs to 80% of EBIT (Earnings Before Interest and Taxes). However, deduction of net financing costs not exceeding DKK 21,300,000 (2010) is always allowed.

2.10 HYBRID INSTRUMENTS

If a company owes debt to a person or company abroad and the tax laws in the foreign country class the debt as equity, the debt will also be treated as equity for the purposes of Danish taxation. Therefore, the interest cannot be deducted by the Danish company. Instead, any interest and capital gains relating to the “debt” will be treated as dividends for Danish tax purposes.

2.11 LIQUIDATION

A Danish company is liable to pay Danish tax until it is finally dissolved. The fact that a Danish company goes into liquidation does not affect the company's tax liability.

When the company disposes of its assets under liquidation, all gains are taxable according to the general rules described above. Further, any shareholders who are liable to pay tax in Denmark will be liable for taxation on any capital gains on the shares or any distributions of surplus remaining on winding up.

As a general rule, remaining surplus on winding up that is distributed in the calendar year where the liquidating company is finally dissolved is taxed as capital gains (see item 2.2.2.1), whereas surplus distributed prior to this year is treated as dividends (see item 2.2.5).

However, surplus left on winding up that is distributed in the calendar year where the liquidating company is finally dissolved will be taxed as dividends, if (i) the recipient company owns at least 10% of the share capital of the liquidating company but

is not a resident of the EU/EEA, the Faroe Islands, Greenland or a Danish treaty partner, or (ii) the recipient company owns less than 10% of the share capital in the liquidating company (but is affiliated with the liquidating company).

On the other hand, surplus left on winding up that is distributed prior to the calendar year in which the liquidating company is finally dissolved is taxed according to the rules for capital gains on shares for shareholders that carry on trade by the sale and purchase of shares and which would otherwise be entitled to receive tax-exempt dividends.

2.12 LIMITED TAX LIABILITY AND WITHHOLDING TAXES

Foreign companies that are not subject to full tax liability in Denmark may be subject to limited tax liability with respect to income and gains deriving from certain sources in Denmark. Limited tax liability for companies applies to, for example, income from permanent establishments, immovable property situated in Denmark, and dividends, royalties and interest distributed from sources in Denmark and certain capital gains on debt claims.

2.12.1 WITHHOLDING TAXES

2.12.1.1 Dividends

As a general rule, dividends distributed from a Danish company to a foreign shareholder are subject to 27% withholding tax.

However, the withholding tax is reduced or removed completely by way of an exemption for dividends paid to a foreign parent company where the parent company holds “subsidiary shares” or “group shares” (as defined above in item 2.2.21) and if the foreign parent company is resident in another EU country, or in a country with which Denmark has entered into a tax treaty according to which Denmark must grant relief or reduction from withholding tax.

Most of the tax treaties concluded between Denmark and other countries state that the Danish withholding tax on dividends is reduced.

Further, the withholding tax does not include dividends received by participants in parent companies named in the list of companies under Article 2(1)(a) of the Parent-Subsidiary Directive, and which are considered transparent entities in respect of Danish taxation. It is a condition that the company participant is not domiciled in Denmark.

In the opinion of the Danish Tax and Customs Administration, the benefit of the exemption may be denied with respect to dividends distributed by Danish companies to intermediary holding companies if in reality the dividends flow through that entity to another entity resident in a “tax haven” jurisdiction. In recent years, the Danish Tax and Customs Administration has adopted an approach that actively scrutinizes such beneficial ownership issues. They are preparing a number of cases on this issue.

2.12.1.2 Royalties

Withholding tax is also applicable to royalties. A 25% tax is withheld from royalty payments deriving from Denmark in relation to patents, trademarks, technical know-how etc. This withholding tax may be reduced under a tax treaty. The withholding tax does not apply if the royalties are attributable to the receiver’s permanent Danish establishment, or the receiver is subject to the protection of the EU Interest/Royalty Directive (Directive 2003/49/EEA), which prohibits EU member states from retaining withholding tax on royalty and interest payments between affiliated companies within the EU.

A company is considered affiliated if another company owns at least 25% of the share capital or if a third company owns at least

25% of the two companies during a period of at least one year during which the payment is made.

2.12.1.3 Interest

As a general rule, a 25% withholding tax applies to interest payments made between controlled companies. However, due to a number of exceptions, the withholding tax generally only applies to interest payments to affiliated companies in low tax countries.

Control exists if a company or an individual (or a group of affiliated companies or related persons) owns, directly or indirectly, more than 50% of the shares in the relevant company or may exercise more than 50% of the votes in the relevant company.

For this purpose, entities with joint management are treated as affiliated companies, and regard is also taken of entities and associations which are fiscally transparent under Danish tax law but which are governed by the rules of corporate law, a corporate agreement or articles of association.

Further, the definition of “control” has been extended so that shares and voting rights held by other participants must be taken into account in the determination of whether an entity holds a controlling interest in another entity, provided that the entity in question has entered into an agreement regarding the exercise of a “*joint controlling influence*” with such other participants.

The withholding tax does not apply if, alternatively:

- (i) the interest is attributable to a permanent establishment in Denmark,
- (ii) the taxation of interest must be waived or reduced under the Interest-Royalty Directive (Directive 2003/49/ECC), and the paying company and the receiving company have been affiliated

- for a continuing period of not less than one year, and the time of payment is within this period,
- (iii) the taxation of interest must be waived or reduced under a tax treaty with the country where the receiving company is resident for a continuing period of not less than one year, and the time of payment is within this period,
- (iv) the receiving company is directly or indirectly controlled by a Danish parent company (as defined under the Danish joint taxation rules) for a continuing period of not less than one year, and the time of payment is within this period,
- (v) the receiving company is controlled by a company resident in a country which has entered into a tax treaty with Denmark, and the company – according to national rules – may be subject to CFC taxation on the interest, or
- (vi) the receiving company can demonstrate that the foreign corporate taxation of the interest equals at least three-quarters of the Danish corporation tax, and it does not forward payments of interest to another foreign company which is subject to a corporate taxation of the interest which is less than three-quarters of the Danish corporate taxation.

The limited tax liability on interest is finally fulfilled by the retention of a 25% withholding tax.

2.12.1.4 Capital gains on claims

In order to prevent taxable interest payments being converted into tax-exempt capital gains, there is also a limited tax liability on capital gains. The limited tax liability on capital gains includes – with the same exemptions that apply to interest – capital gains on claims which are to be paid in at a predetermined premium when the creditor is a foreign, affiliated legal person.

The limited tax liability on capital gains is finally fulfilled by the retention of a 25% withholding tax.

2.12.2 PERMANENT ESTABLISHMENTS

In Denmark, a permanent establishment is determined in accordance with the principle set out in Article 5 of the OECD Model Treaty. In general, a permanent establishment is a fixed place of business through which the business of an enterprise is wholly or partly carried on. This may include, for example, a place of management, a branch, an office, a factory, a workshop, a place of extraction of natural resources, or a building site, construction or installation project.

Generally, activities such as direct sales from a foreign seller to a Danish purchaser, purchases of stocks of goods and merchandise, collection of information, advertising, public relations and research and development do not constitute a permanent establishment. If an employee or other representative is authorised to conclude contracts in the name of the foreign entity, the foreign entity may be regarded as having a permanent establishment in Denmark. However, selling through a Danish independent agent or distributor does not create a permanent establishment in Denmark provided that such a person is acting in the ordinary course of his business.

A foreign company which has a permanent establishment in Denmark will generally also be required to register a Danish branch with the Danish Commerce and Companies Agency.

A foreign company is permitted to establish a branch office in Denmark if the company has been lawfully set up in its home country and the establishment of the branch office is permitted in accordance with an international agreement, if the Danish Commerce and Companies Agency finds that the country in question also allows Danish companies to set up branches, or if the Danish Commerce and Companies Agency grants an individual permission. Corporations resident in the EU, the EEA, the U.S.,

Switzerland, Georgia and South Korea are free to establish branch offices in Denmark.

A branch office may not commence its activities in Denmark before it has applied for registration. Transactions between the branch office and its parent entity must be conducted at arm's length in order to avoid transfer pricing adjustments.

If a company has a permanent establishment in Denmark, it is subject to limited tax liability with respect to any income/gains and costs/losses derived from the permanent establishment.

The taxable income is generally determined as if the company was subject to full tax liability and the taxable income is taxed at the corporate tax rate applied to Danish companies (currently 25%).

However, certain exceptions apply for branch offices. For example, interest on loans paid by the branch office to the foreign head office is not deductible and profits made by the branch office may be remitted to its head office free of withholding tax.

In principle, no restrictions exist for remittance of profits from a branch office to its head office, while dividends from a subsidiary may be restricted by the Danish Companies Act (Selskabsloven).

If activities in Denmark are expected to generate losses for a period of time, it may be advantageous for a foreign company to conduct its operations through a Danish branch office because branch office losses can be used to offset profits outside of Denmark.

Capital gains may arise when a branch office is transformed into a Danish subsidiary. However, according to special rules on "contribution of assets", such a transfer can be structured so that no tax is levied on the branch, provided that the subsidiary

takes over the tax liability. Tax losses carried forward by a branch office cannot be transferred to a subsidiary. Therefore, a transfer to a Danish subsidiary should not take place before the branch office has been profitable for a period and any losses have been absorbed.

2.12.3 REQUALIFICATION OF NON-TRANSPARENT COMPANIES

Under the Danish Corporation Tax Act, a legal entity will be considered to be transparent for tax purposes when, under the rules of another country which is a member of the EU or the EEA or which has entered into a double taxation treaty with Denmark, it is treated as a transparent unit for taxation purposes so that the income of the Danish company is included in the assessment of affiliated legal persons' taxable income in that country.

The purpose of the provision is to prevent the situation where a Danish company is treated as a transparent entity in the home country of the parent company, for example according to the U.S. "check-the-box" rules, so that interest payments are tax-exempt in the U.S. but may be deducted by the Danish company.

The allowance limitation also applies in relation to payments to other foreign group companies which are not liable to pay tax in Denmark but which are considered to be transparent for the purposes of tax in the parent company's home country, unless these companies are resident in an EU or EEA country or a country which has entered into a double taxation treaty with Denmark.

Companies which are deemed to be transparent are always considered to have a permanent establishment in Denmark.

2.12.4 REQUALIFICATION OF TRANSPARENT ENTITIES

According to the Danish Ministry of Taxation, the different tax qualification of Danish branches and certain other entities – e.g.

limited partnerships – in Denmark and abroad has made it possible to avoid incurring tax liability on certain types of income.

In order to counter this, a special anti-avoidance rule has been introduced. The rule operates so that fiscally transparent entities (e.g. limited partnerships) and branches of non-Danish entities may be qualified as separate tax entities and taxed in the same way as public limited companies, where direct owners holding more than 50% of the capital or the voting rights are domiciled in one or more foreign states, in the Faroe Islands or in Greenland, if the state(s) where such owners are domiciled:

- (i) considers the entity a separate tax entity; or
- (ii) does not exchange information with the Danish tax authorities.

This rule applies where the transparent entity or branch is required to be registered in Denmark, has its registered office in Denmark under the articles of association, or is effectively managed in Denmark.

Non-Danish entities and branches that are deemed transparent in their home jurisdictions are disregarded in a determination of who the direct owners are.

An exemption exists for venture funds investing in small and medium-sized companies.

3. Taxation of partnerships and other entities

3.1 PARTNERSHIPS

In a general partnership (in Danish, termed an *interessentskab* or *I/S*), the partners are jointly and severally liable for the obligations of the partnership. Both individuals and legal entities may be partners. The partnership and the relationship between the partners are governed by a partnership agreement and by the general principles of Danish law. General partnerships are also subject to the rules of the Danish Business Enterprises Act (*Lov om Erhvervsdrivende virksomheder*) governing business names and powers of procuration, etc. General partnerships in which all partners are limited companies or similar companies must be registered with the Danish Commerce and Companies Agency.

A limited partnership (in Danish, *kommanditselskab* or *K/S*) consists of one or more general partners and one or more limited partners. Both general and limited partners may be individuals or any kind of legal entities. A general partner has unlimited liability, whereas a limited partner's liability is limited according to the provisions in the partnership agreement. The limited partnership and the relationship between the partners are governed by a partnership agreement and by the general principles of Danish law. Like general partnerships, limited partnerships are also governed by the rules of the Danish Business Enterprises Act (*Lov om Erhvervsdrivende virksomheder*). A limited partnership in which all partners are limited companies or similar companies must be registered with the Danish Commerce and Companies Agency.

A general or limited partnership, as such, is not liable to pay Danish tax. The partnership is transparent for tax purposes and taxes are

levied on the individual partners in proportion to their shares in the partnership.

Depending on the nature of the business carried on by the general partnership, a permanent establishment may be held to exist in Denmark. In that case, all partners who are not already subject to full tax liability will be subject to limited tax liability on income and capital gains derived from the permanent establishment.

3.2 EUROPEAN ECONOMIC INTEREST GROUPING (EEIG)

An EEIG may be established in the pursuance of EC Regulation 2137/85. The parties to an EEIG are jointly and severally liable for the obligations of the EEIG. In order to set up an EEIG, business entities from at least two EU countries must be represented. If the EEIG is domiciled in Denmark, it must be registered with the Danish Commerce and Companies Agency. According to the EC Regulation, at Article 40, the EEIG is transparent for tax purposes and taxes can only be levied on the individual participants. The participants are taxed according to national legislation in their respective countries of residence.

3.3 FOUNDATIONS AND ASSOCIATIONS

Generally, foundations and associations are taxed in the same way as corporations. However, a number of important exceptions and special provisions apply – depending on the specific nature and characteristics of the foundation or association. Whereas some associations are transparent for tax purposes, other associations are only subject to taxation in respect of income from business activities. Deliveries made by an association to its members are not considered to be taxable business activities.

Contributions to associations and foundations are, as a general rule, tax-free.

Foundations and associations may generally set off distributions against their annual income when the distributions are made pursuant to the objective of the entity in question.

Furthermore, if a contribution to the founding of a foreign foundation is made, the contributor is generally liable to pay tax at 20%. The contributor is also liable to pay tax if a contribution is made after establishment of the foundation. These rules are only applicable to foundations set up in countries where foundations are taxed at significantly lower rates than in Denmark.

3.4 PRODUCTION AND MARKETING COOPERATIVES

Production and marketing cooperatives are generally subject to taxation at a rate of 14.3% of their taxable income, which is determined as a specific percentage of their capital (usually in the range of 4% to 6%).

3.5 INVESTMENT ASSOCIATIONS

Special rules apply to investment associations and investment companies.

Investment companies are for tax purposes defined as:

- (i) undertakings for collective investments in transferable securities comprised by the UCITS Directive (85/611/EEC);
- (ii) companies whose businesses consist of investment in securities and where, at the request of the holders, shares in the company will be redeemed by the company or a third party at a price not materially below the net asset value; and
- (iii) companies whose businesses consist of investments in securities and which have at least 8 shareholders. Affiliated entities and related parties are regarded as a single shareholder.

However, a company is not considered an investment company pursuant to (iii) above if:

- (a) the company, through subsidiaries, primarily invests funds in assets other than securities;
- (b) more than 15% of the company's assets are assets other than securities; or
- (b) the company solely owns (i) shares, warrants or share rights in another company (the "employer company") that is not itself an investment company, and (ii) cash or cash deposited in an on-demand account not exceeding 15% of the company's total assets, provided that at the time of the purchase of the shares, all the shareholders in the first-mentioned company were employed by the employer company or a company affiliated with the employer company.

If the company has a controlling influence over or is affiliated with another such company, a proportionate part of the other company's assets is included in the calculation of the 15% threshold referred to in item (b) above.

Further, shares in another company that is not itself an investment company, where the shareholding equals at least 10% of that other company's share capital, are not considered to constitute securities.

Investment companies are exempt from corporate tax. Instead, gains and losses on shares in investment companies are taxed pursuant to the mark-to-market principle.

Dividends on shares in investment companies are generally taxed at a rate of 25%.

Dividends distributed from Danish companies to investment companies are generally taxed according to a final withholding tax of 15%.

Other accumulating investment associations are generally taxed as corporations.

Distributing and account-based investment associations are usually exempt from tax as the investors are taxed in accordance with the principle of transparency.

3.6 PENSION FUNDS

Pension funds are exempted from corporate tax. However, a special pension yield tax is payable at a flat rate of 15%.

As from the tax year 2010, taxation is applied at the level of the pension saver, whether the pension scheme is set up with a life insurance company, a pension fund or a financial institution.

Following the judgement made by the European Court of Justice on 30 January 2007 in case C-150/04 (*Commission vs. Denmark*), by which the Court held that Denmark must allow tax deductions for pension contributions to pension funds located in other EU member states, the Danish rules on taxation of pensions and pension funds have been amended in accordance with EU law.

Consequently, payments to pension schemes held by pension providers in other member states may also be deducted. This happens in accordance with an agreement model. This model implies that the foreign pension providers must make a binding agreement with the Danish authorities to report, withhold and pay tax in the same way as Danish pension providers.

Special rules apply with respect to pension schemes held by people moving to Denmark.

4. Taxation of individuals

4.1 TAX LIABILITY

As a general rule, an individual will have full tax liability if he is resident in Denmark or present in Denmark for a period of 6 months.

Individuals who are not subject to full tax liability in Denmark may be subject to limited tax liability in respect of income and gains deriving from certain sources in Denmark, including remuneration in respect of employment in Denmark, immovable property situated in Denmark, and dividends or royalties distributed from sources in Denmark.

4.2 TAX RATES

As a general rule, the income tax rate in Denmark has a maximum marginal rate of approximately 51.5% (the "tax ceiling"). The marginal tax rate including labour market contributions (which apply to salaries and wages etc.) is 56.5% (2010).

The income taxes for individuals include state tax, municipal tax, health tax and church tax.

The state tax is calculated as a progressive tax divided into a bottom-bracket tax of 3.67% (2010) and a top-bracket tax of 15%, which is calculated on income exceeding DKK 389,900 (2010).

Further, municipal taxes and health tax have to be paid on a flat-rate basis (on average 24.9% in 2010).

A church tax of 0.7% (average 2010) is payable by members of the Danish National Evangelical Lutheran Church (*Folkekirken*).

Additionally, a labour market contribution of 8% and minor

contributions, for example, to the Danish Labour Market Supplementary Pension (ATP), are payable. These contributions are deducted before the calculation of income tax.

All fully liable taxpayers are entitled to a personal allowance. In 2009, the personal allowance is DKK 42,900 (2010) for taxpayers who have reached the age of 18 by the end of the income year.

Employment is rewarded by an additional employment deduction of up to DKK 13,600 (2010).

4.3 FILING OF TAX RETURNS AND PAYMENT OF TAXES

The taxation year is the same as the calendar year. In March or April following the end of the calendar year, an income tax return is sent to each individual taxpayer. The tax return includes the figures that are known to the Tax Administration. The taxpayer must correct the figures before 1 May if the pre-populated figures are incorrect.

As a general rule, income tax on individuals is subject to withholding tax provisions. If the estimated tax is not subject to such withholding provisions ("B-tax"), it is collected over the course of 10 instalments during the relevant tax year.

4.4 CALCULATION OF TAXABLE INCOME

4.4.1 INCOME AND CAPITAL GAINS

The tax base includes worldwide income, including salaries, pensions, fringe benefits, profit-sharing plans and self-employment income.

Benefits are generally included in the taxable income and are based on their market value (for example, for a free company car) or based on standard rates (for example, for multimedia).

Certain healthcare benefits provided by the employer are exempt from taxation provided that the benefits are offered to all employees. Similar rules apply to education.

Employer contributions to pension schemes are tax-exempt. However, contributions are limited to DKK 46,000 (2010) if the pension is paid out as a lump sum.

Taxable income also includes capital gains on real property, shares, bonds, debt, receivables and financial instruments and related income such as interest, rental income and dividends.

Capital gains and interest are generally taxed as capital income at the progressive tax rates described above (but without any addition of labour market contributions). However, capital income which does not exceed a lower threshold of DKK 40,000 (DKK 80,000 for spouses) is exempt from tax.

Share income generally comprises capital gains and dividends on shares. Share income up to DKK 48,300 is taxed at a flat rate of 28%, whereas share income in excess of that amount is taxed at a flat rate of 42%.

4.4.2 DEDUCTIONS

Individuals are entitled to deduct expenses specifically associated with their work – such as the cost of commuting between home and work, expenses for unemployment insurance, trade union fees and contributions towards early retirement schemes.

Further, as a general rule, net interest payable (negative capital income) such as interest on private loans or other net financial losses can be deducted in other income.

In general, however, individuals may only deduct expenses and

losses, including interest expenses, in municipal and county taxes. Apart from interest expenses of up to DKK 50,000 per taxpayer (DKK 100,000 for spouses), the tax value of such deductions will be further reduced until 2019. Following this, the tax value of such deductions will be approximately 25.5%.

As from 2010, pension contributions are only deductible in personal income by up to DKK 100,000 (2010) per year.

Self-employed persons can deduct all expenses that have served to earn, secure and maintain their self-employment income (such as operating costs).

4.5 EMPLOYEE EQUITY PLANS

Danish tax law offers the following four different tax schemes for share-based employee incentives:

4.5.1 SECTION 4 OF THE DANISH STATE TAX ACT (*STATS-SKATTELOVEN*) AND SECTION 16 OF THE DANISH TAX ASSESSMENT ACT (*LIGNINGSLOVEN*):

As a general rule, warrants and shares (and similar) are treated as cash remuneration and their value is taxed at grant as ordinary employment income. Any subsequent gain derived from the disposal of the shares received upon grant or exercise is taxed as a capital gain on shares (share income).

4.5.2 SECTION 28 OF THE DANISH TAX ASSESSMENT ACT:

Employee share options are generally taxed at exercise as ordinary employment income. Any subsequent capital gain derived from the disposal of the shares received in connection with the exercise is taxed as a capital gain on shares as share income.

4.5.3 SECTION 7A OF THE DANISH TAX ASSESSMENT ACT:

A tax exemption applies to employee share schemes which are

offered generally to all employees or groups of employees. Where the tax exemption applies, no tax will fall due at grant or exercise. At disposal of the shares, any gain is taxed as share income.

The value of tax-exempt options is limited to 10% of each employee's annual salary per year and the shares must be tied up for at least 5 years.

As regards shares, the value must not exceed an amount of DKK 22,800 (2010) and the shares must be restricted from transferability over a period of 7 years.

4.5.4 SECTION 7H OF THE DANISH TAX ASSESSMENT ACT:

Under certain conditions, a special tax scheme also makes it possible to postpone taxation of options and shares until the shares acquired under the incentive scheme are disposed of. The share gain will then be taxed as share income – i.e. at a lower tax rate than employment income.

The employee and the company must agree in writing to opt for the regime and the value of the shares and options may not exceed 10% of the employee's annual salary per year.

The employer company cannot deduct the cost of the options against its taxable income.

4.6 EXPATRIATE TAX REGIME

A special expatriate tax regime applies to foreigners employed by a Danish-resident employer. According to this scheme, under certain conditions the employee may opt for a flat tax rate of 25% over a period of 3 years or, alternatively, a flat tax rate of 33% over a period of 5 years. These rates will apply instead of the ordinary progressive rates and a marginal tax rate of 56.5% (including labour market contributions). However, when using the scheme,

the employee will not be allowed to make any deductions on taxable income. To qualify for the scheme, individuals must reside in Denmark during the contract period, and their cash salary (if individuals have not been officially approved as researchers) must exceed DKK 69,348 (2010) per month (excluding contributions to the Danish Labour Market Supplementary Pension (ATP) and other pension contributions).

5. Other taxes

5.1 SPECIAL GAS AND OIL TAX

Enterprises engaged in oil exploration, extraction and related activities are subject to special legislation on hydrocarbon tax.

5.2 DANISH MARITIME TONNAGE TAX

Denmark has a special tax scheme for shipping companies offering an alternative basis for taxation. Under the scheme, a shipping company's Danish taxes are calculated on the basis of the capacity (tonnage) of the ships used by that company rather than on its profit or loss.

5.3 VALUE ADDED TAX

VAT is paid at all stages of the production and distribution of goods and services. Enterprises calculate their VAT liability as the difference between VAT paid on purchase and VAT levied on sales. The VAT rate is 25%.

5.4 PAYROLL TAX

VAT-exempt businesses are liable to pay a payroll tax (*lønsoms-afgift*). The payroll tax rate depends on the specific VAT-exempt activity of the company. The rate generally varies between 2.5% and 9.13%. The taxation basis is calculated against the background of the company's total payroll.

5.5 EXCISE DUTIES AND GREEN TAXES

A levy on the emission of carbon dioxide by companies and enterprises applies. It is possible to obtain a refund from the government in order to offset, in whole or in part, the negative effects of the carbon dioxide tax on energy-consuming companies and enterprises. Levies are imposed on energy, water consumption and waste disposal.

5.6 REGISTRATION DUTIES

Registration duties are imposed with respect to certain registrations such as registration of title to land, mortgages and ownership reservations. The rate of duty on registration of ownership to real property is 0.6% of the purchase price, plus DKK 1,400. The rate of duty on mortgages and ownership reservations is 1.5% of the secured claim plus DKK 1,400.

Duties are also imposed on certain registrations of rights concerning ships and aircraft.

A vehicle registration fee of up to 180% of the value is levied on private vehicles.

5.7 STAMP DUTY

Stamp duty is imposed on certain insurance documents only.

5.8 SOCIAL SECURITY, HEALTHCARE AND OTHER WELFARE SYSTEM CONTRIBUTIONS

Apart from the above-mentioned health tax and labour market fund contributions (which are in fact state taxes paid by the taxpayers themselves), there are no other social security, healthcare or welfare system contributions (from a tax perspective). Further, the employer is not obliged to pay for any unemployment insurances.

However, it should be noted that from an employment law perspective, there are a number of obligatory social payments, including the ATP, FIB, AER and AES. The payment duty and the rates depend on, for example, the number of employees, whether they are paid by the hour and whether they are salaried employees.

In the event of dismissal of an employee, the employer is generally not obliged to pay any severance allowance.

The government provides a favourable (and early) pension plan for people who have reached 60 years of age.

5.9 PROPERTY TAXES

Real property owners have to pay local taxes on the property value of their land. Depending on the local authorities, the tax rate is between 1.6% and 3.4%.

Homeowners are liable to pay tax on the value of housing property. The tax rate is 1%. However, for any part of the value that exceeds a limit of DKK 3,040,000 (2008), the tax rate is 3% on that amount.

Properties used for certain business purposes may be subject to a municipal service charge of 0.875% of the value of the buildings.

5.10 INHERITANCE AND GIFT TAX

5.10.1 INHERITANCE TAX

Inheritance tax is payable by the estate if, at the date of death, the deceased's country of residence was Denmark. Further, inheritance tax is payable on real property or estates relating to a permanent establishment situated in Denmark.

As a general rule, the tax rate is 15% of the value of the inheritance received by the next of kin. Spousal inheritance is free from any taxation. Inheritance by other persons is, as a general rule, subject to a tax rate of 36.25%.

The basis for calculating inheritance tax is the total value of the deceased's estate. Pensions and life insurances are included in the tax basis unless they accrue to a spouse. The value of the estate is generally the fair market value.

5.10.2 GIFT TAX

As a general rule, gifts are taxed as personal income.

However, a gift to a next-of-kin is tax-free provided that the value of the gift does not exceed 58,700 (2010). Amounts exceeding 58,700 (2010) in value are taxed at 15%.

Gifts to spouses are not subject to taxation.

6. Binding rulings

The Danish system comprises a set of rules that give taxpayers an opportunity to obtain a “binding ruling” from the Tax Administration.

Any person can obtain a binding ruling from the tax authorities with respect to a transaction that is intended to be executed by the applicant, or has already been executed. However, if the request concerns a third party, a ruling can only be obtained with respect to transactions which have not yet been made.

The request must be made in writing and contain all of the information available that is of importance to the reply. A fee of DKK 300 (2010) applies.

A binding ruling is binding on the tax authorities for a period of five years. However, a shorter time frame may be decided when the ruling is issued. A binding ruling is not binding:

- to the extent that the facts and assumptions on which the ruling is based change, including changes in legislation;
- if the answer is found to be contradictory to EU legislation; or
- if the answer is contradictory to a foreign tax authority's opinion regarding the interpretation of a tax treaty.

7. Tax Treaties

Denmark has concluded a large number of tax treaties.

The tax treaties generally follow the credit method. However, some treaties follow the exemption method.

As mentioned above, dividends paid to a foreign parent company are not subject to any Danish withholding tax (or only to a reduced tax) if the parent company holds “subsidiary shares” or “group shares” (as defined above in item 2.2.21), and if the foreign parent company is resident in another EU country, or in a country with which Denmark has entered into a tax treaty according to which Denmark must grant relief or reduction from withholding tax.

Most of the tax treaties concluded by Denmark state that the Danish withholding tax on dividends is reduced.

Further, interest is generally only subject to withholding tax if paid to affiliated entities in low tax countries.

Please note that the applicable regulations and the royalty and dividend definitions should always be examined in the particular tax treaty in question.

The list below reflects the situation as at 1 February 2010:

TAX TREATY COUNTRIES	DIVIDENDS (%)	ROYALTIES (%)
ARGENTINA	10/15	3-15
AUSTRALIA	15	10
AUSTRIA	0/15	0
BANGLADESH	10/15	10
BELGIUM	15	0
BRAZIL	25	25/15
BULGARIA	5/15	0
CANADA	5-15	10
CHILE	5/15	5/15
CHINA, PEOPLES REPUBLIC OF	10	10
CROATIA	5/15	10
CYPRUS	10/15	0
CZECH REPUBLIC	15	5
EGYPT	15/20	20
ESTONIA	5/15	5/10
FINLAND	15	0
FAEROE ISLANDS	15	0
GERMANY	15	0
GREECE	18	5
GREENLAND	0/15	10
HUNGARY	5/15	0
ICELAND	15	0
INDIA	15/25	20
INDONESIA	10/20	15
IRELAND	15	0
ISRAEL	15**	10***
ITALY	15	5
JAMAICA	10/15	10

JAPAN	10/15	10
KENYA	30	20
KOREA	15	10/15
LATVIA	5/15	5/10
LITHUANIA	15	5/10
LUXEMBOURG	5/15	0
MACEDONIA	5/15 (0 FOR PENSION FUNDS)	10
MALAYSIA	0	SPECIAL PROVISIONS
MALTA	0/15	0
MEXICO	0/15	10
MOROCCO	10/25	10
NETHERLANDS, THE	0/15	0
NEW ZEALAND	15	10
NORWAY	15	0
PAKISTAN	15	12
PHILIPPINES	10/15	15
POLAND	0/15 (5 FOR PENSION FUNDS)	5
PORTUGAL	10	10
RUMANIA	10/15	10
RUSSIA	10	0
SERBIA AND MONTENEGRO (YUGOSLAVIA)	5/15	10
SINGAPORE	0/10 (5 FOR PENSIONS FUNDS)	10
SLOVAKIA	15	5
SLOVENIA	15 (5 FOR PENSIONS FUNDS)	5
SNG – ARMENIA, GEORGIA, BELARUS, KYRGYZSTAN AND MOLDOVA	15	0
SRI LANKA	15	10
SWEDEN	15	0

SWITZERLAND	0†	0††
SOUTH AFRICA	5/15	0
TAIWAN	10	10
TANZANIA	15	20
THAILAND	10	5/15
TRINIDAD AND TOBAGO	10/20	0/15
TUNISIA	15	15
TURKEY	15/20	10
UGANDA	10/15	10
UKRAINE	5/15	10
UNITED KINGDOM	0/15	0
UNITED STATES	5/15	0
VENEZUELA	5/15	5/10
VIETNAM	(5-10)15	5/15
ZAMBIA	15	15

¹ With respect to Greenland, a special rule of transition will be effective in the period 2009 -2012. In case a Greenlandic company has distributed dividends in 2007, Greenland is entitled to tax the dividends that will be distributed in the period 2009-2012, up to an amount that equal the dividends amount distributed in 2007 at a rate of 40.6% i 2009; 39.2% in 2010, 37.8% in 2011 and 36.4% in 2012.

** On 11 September 2009, Denmark and Israel agreed to enter into a new double tax treaty. According to the treaty, the rate will be reduced to 0/10%. It is uncertain from which date the double tax treaty will be effective.

*** On 11 September 2009 Denmark and Israel agreed to enter into a new double tax treaty. The treaty provides that royalties can generally only be taxed in the state where the recipient of the royalties is resident. Further, no tax ceiling has been agreed. It is uncertain from which date the double tax treaty will be effective.

† On 21 August 2009, Denmark and Switzerland signed a protocol which amends the withholding tax rate for dividends. According to the protocol, the rate will be increased to 15%, but it is uncertain from which date the protocol will be effective.

†† On 21 August 2009, Denmark and Switzerland signed a protocol according to which royalties can generally only be taxed in the state where the recipient of the royalties is resident. Further, no tax ceiling has been agreed. It is uncertain from which date the protocol will be effective.

DISCLAIMER

This guide has been prepared to provide readers with a general overview of the principles of taxation in Denmark.

This guide must not be used as a substitute for professional advice. If you have any questions, please contact Arne Møllin Ottosen (mail to: ao@kromannreumert.com).

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Every care has been taken to ensure that the information is accurate as at 1 June 2010, unless otherwise stated.



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