Redmark

TAX, VAT & DUTIES

Transfer Pricing in Denmark

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The rules for transfer pricing documentation in Denmark have been altered in the past few years. This means that the documentation must now be submitted to the Danish Tax Authority unsolicited and no later than 60 days after the tax return deadline.

Why Transfer Pricing?

The main purpose of the transfer pricing rules is that intra-group purchases and the sale of goods, services and rights must be priced under market terms. All controlled transactions must therefore be priced as if they were carried out between independent parties.

The transfer pricing guidelines is prepared by OECD and apply in most parts of the world. However, different thresholds apply across the world, when determining whether entities are obligated to prepare and file transfer pricing documentation.

In Denmark, several companies are covered by the statutory obligation to prepare and submit transfer pricing documentation on an annual basis. The documentation must prove that the individual entity's controlled transactions are priced according to market terms.

Who is subject to the rules?

Groups that have over 250 or more employees worldwide

Groups that have less than 250 employees but have:

1. an annual total balance sheet value of DKK 125 million or more and
2. an annual turnover of DKK 250 million or more

Groups that have cross-border controlled transactions with entities located in tax havens

For purely Danish transactions

In principle, groups with purely Danish transactions are exempt from the extended documentation requirement.

According to the Danish rules, all controlled transactions must be priced according to the arm's length principle. All transactions between affiliated companies and permanent establishments, as well as main shareholders are regarded as controlled.

Danish companies, permanent establishments and individuals must disclose the scope of their controlled transactions to the Danish tax authorities on an annual basis as part of the corporate income tax return.

If they do not qualify for certain exemptions, companies and permanent establishments must also prove to the tax authorities that their controlled transactions have been priced according to the arm's length principle by preparing transfer pricing documentation.

As from fiscal years that began on 1 January 2021, such documentation must be prepared continuously and be completed in time to be submitted to the tax authorities no later than 60 days after the deadline for filing of tax returns.

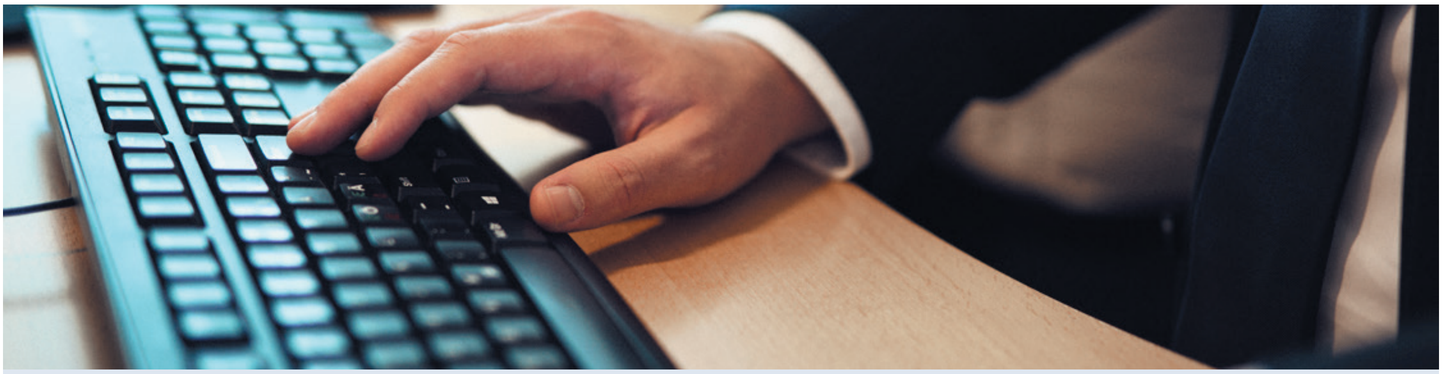
Companies and permanent establishments that are tax-liable in Denmark and have controlled transactions must upload transfer pricing documentation if the group has 250 employees or more as a whole (foreign entities are included in this criterion).

Companies and permanent establishments belonging to a group with less than 250 employees may be exempt from the documentation requirement if the group has one of the following:

- consolidated turnover of less than DKK 250 million **or**
- consolidated assets below DKK 125 million

No exceptions shall apply, however, in cases where the controlled transactions are carried out with entities in countries outside the EU/EEA with which Denmark does not have a double taxation agreement. The transfer pricing documentation must then be prepared and reported according to the above-mentioned deadlines, regardless of the size of the group.

If the company's main shareholder is, e.g. registered in Dubai, transactions between the company and the main shareholder must be documented regardless of the size of the company, as Denmark has not concluded a double taxation agreement with Dubai.



The group definition

A company is part of a group when it exercises control over other companies/permanent establishments, or when control is exercised over the company in question. 'Control' entails the holding of more than 50% of the share capital or voting rights.

According to the rules on unsolicited submission of transfer pricing documentation for controlled transactions, the group definition is broader than the group concept, which applies to, e.g. joint taxation. Transactions between companies that each belong to separate jointly taxed groups, but which are interlinked by an individual who exercises control over both companies at the top, will therefore be regarded as a controlled transaction that is potentially covered by the documentation requirement.

The equity interest and voting rights of related persons will also be taken into account when determining whether there is decisive influence. 'Related persons' are regarded as the relevant shareholder's spouse, parents, and grandparents, as well as children and grandchildren and their spouses or estates after the persons mentioned. Stepchildren and adopted children are equated with biological relationships.

Exception for controlled transactions between Danish entities

Controlled transactions between two Danish entities are exempt from the documentation requirement in the vast majority of cases, regardless of the group's size. The majority of 'purely' Danish groups are therefore exempt from having to document compliance with the arm's length principle. This does not preclude the fact that the tax authorities may nevertheless initiate a tax inspection regarding the pricing of the controlled transactions – the group simply avoids having to prepare and report extensive documentation for it in advance.

However, the following controlled transactions between Danish entities are not exempt from the documentation requirement:

- Controlled transactions where one party is taxed according to the tonnage tax act or hydrocarbon tax act
- Controlled transactions where one party is covered by the special rules for the taxation of cooperatives
- Controlled transactions where one party is covered by the special rules for the taxation of 'tax-exempt' associations or other tax-exempt entities
- Controlled transactions where one party is covered by specific rules for the taxation of cooperatives
- Controlled transactions where one party is a permanent establishment of a foreign entity

Country-by-Country Reporting

For larger groups with a total turnover greater than DKK 5.6 billion, additional requirements apply in the form of specific country-by-country reporting.

If the parent company of such a group is registered in Denmark, it must prepare and report a country-by-country report.

Danish entities that are only part of a group with a consolidated turnover of DKK 5.6 billion or more must notify the Danish Tax Authority about which company in the group is required to submit the country-by-country report and which tax authority the report will be submitted to.

A country-by-country report is a standardised and schematic report on the group's economic activities in each country worldwide.

Content of transfer pricing documentation

The transfer pricing documentation is in two parts and consists of the following:

1. Master file: *Joint documentation that describes the overall activity of the entire group.*

2. Local file: *Country-specific documentation that describes the entity in Denmark and the controlled transactions with it.*

The volume of documentation depends on the complexity of the group, the number of companies subject to documentation, and controlled transactions. The transfer pricing documentation in Denmark must be prepared in Danish, Norwegian, Swedish, or English.

Specific requirements apply to the content of the documentation:

Joint documentation (master file) must include:

- Group structure
  A group diagram showing the group's legal and organisational structure, including a specification of the countries in which each related party operates.
- Business activity
  A general description of the group's business activities and strategy for the same. The file must also contain a description of the group's supply chain, significant value drivers, significant service agreements and a brief, overall functional analysis.
- Intangible assets
  A general description of the group's overall strategy for development, ownership, and utilisation of intangible assets, including research and development activity.
- Financial activity
  A general description of how the group is financed, including a description of the key financial arrangements with independent providers of finance.
- Accounting and tax position
  An overview of the group's consolidated accounts for the year as well as information on any Advanced Pricing Agreements (APAs).

The country-specific documentation (local file) must include:

- A detailed description of the company
  This includes a description of the company's management, organisation, business strategy, and competitors as well as any restructurings.
- Overview of controlled transactions
  A description of all the company's controlled transactions, which will typically include purchases, sales, management fees, loans, guarantees, payment of royalties, etc.
- Functional analysis
  A detailed functional analysis must be prepared for each type of controlled transaction. This includes the identification and allocation of all significant functions, assets and risks that are relevant to the particular controlled transaction.
- Comparative analysis for each type of controlled transaction
  A comparability analysis of the controlled transaction must be prepared on the basis of the functional analysis. This implies that the controlled transaction must be tested in order to determine and prove that the controlled transaction has been priced under market terms. Pricing is tested by comparing the controlled transaction with comparable independent transactions.
- Financial activity
  All intra-group financing services must be described, analysed, and tested individually. The purpose of this is to prove that these transactions have been carried out in accordance with the arm's length principle.
- Intangible assets
  All relevant transactions regarding intangible assets must be described, analysed, and tested individually. The purpose of this is to prove that those transactions have been carried out in accordance with the arm's length principle.
- Accounting and tax position
  Brief overview of the company's accounting and tax position, as well as information on concluded Advanced Pricing Agreements (APAs).

Deadlines and consequences

Transfer pricing documentation regarding an obligated company's fiscal year beginning on 1 January 2021 or later must be prepared continuously and submitted to the tax authorities no later than 60 days after the deadline for submitting tax returns.

Failure to submit documentation on time, or the submission of insufficient documentation can be sanctioned by the tax authorities in the form of fines and a discretionary assessment of the company's taxable income.

The fines for non-compliance were determined several years ago, by taking into account what compiling such documentation would usually cost a company. Consequently, the fine was set at DKK 250,000 per violation. This fine may be reduced to DKK 125,000 if the company prepares transfer pricing documentation of sufficient quality after the deadline has expired.

A possible correction in income as a result of an estimated assessment will also result in an additional fine of 10% of the rise in income.

Redmark's transfer pricing services

At Redmark, we strive to customise an advisory process on transfer pricing for the individual client, with the aim of producing a solution that fits the needs of that client.

We often initiate the advisory process by providing an overall explanation of transfer pricing rules and models, after which we have a conversation about the customer's business. We then agree on how the advisory process should proceed on the basis of this initial meeting.

The companies we help are diverse and include both Danish-owned medium-sized groups and Danish subsidiaries of foreign groups. That is why our advice is also diverse. Some customers already have considerable expertise in transfer pricing but need advice in understanding specific Danish conditions. Other customers need us to manage the process of preparing their transfer pricing documentation.

We also help many of our customers to improve the pricing procedures for their controlled transactions. For example: an adjustment of transfer prices as a result of changes in the company, the improvement of internal procedures for pricing of controlled transactions.

Redmark is part of MGI Worldwide, an international network consisting of 250 audit, tax, and consultancy firms from over 100 different countries. This international cooperation means that we can offer advice regarding transfer pricing, as well as other audit and tax matters, throughout the world.

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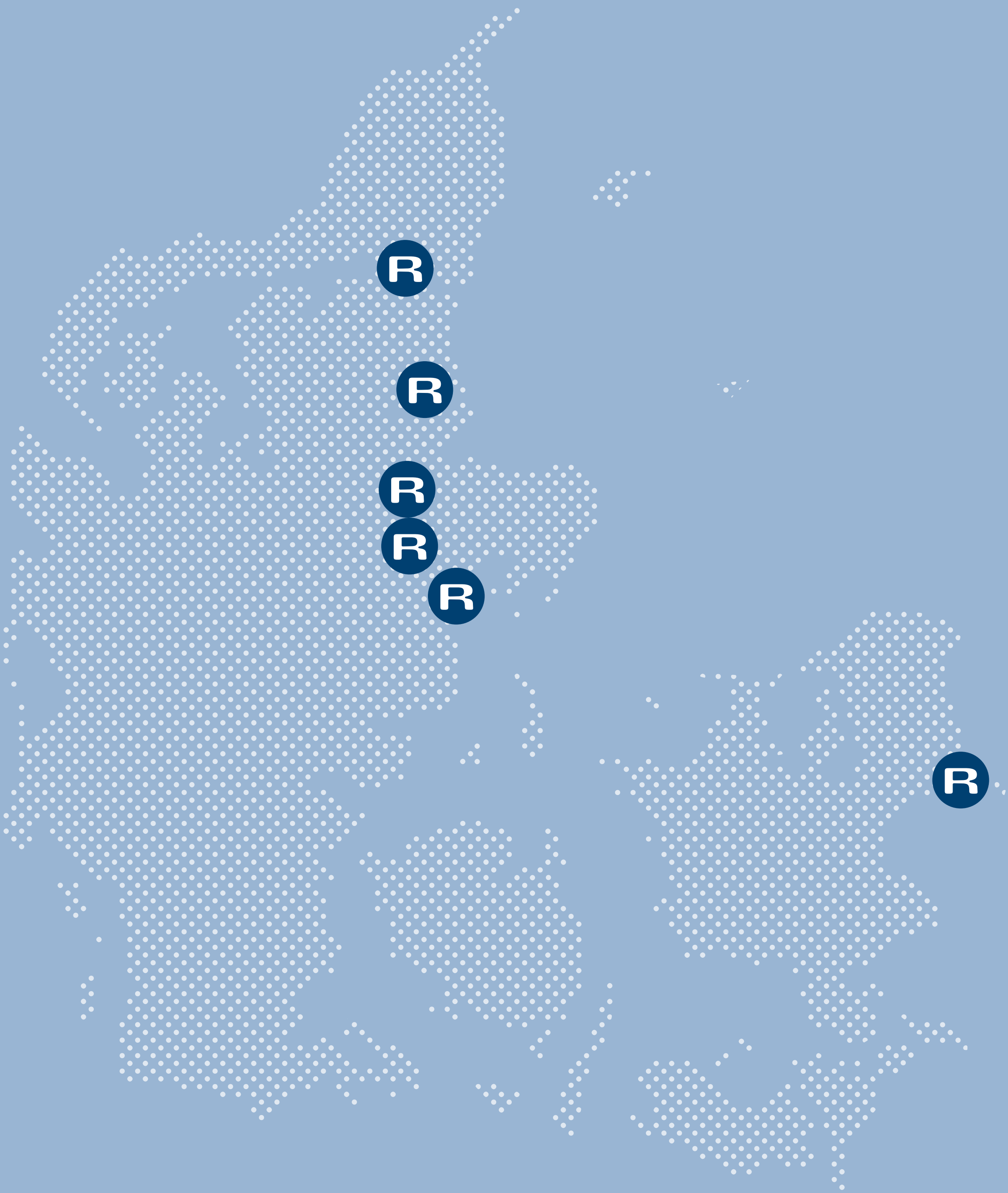

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