

## TAXATION IN DENMARK

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### 1. INTRODUCTION

The Danish tax system comprises direct and indirect taxes. Direct taxes include income tax, while the principal indirect taxes include value added tax (VAT) and excise duties, which are charged on the import and sale of certain products, energy and raw materials and waste etc.

#### 1.1 Principal taxes

The Danish corporate tax rate is 28% (2006) calculated on a flat basis.

The income taxes for individuals are national tax, municipal tax, county tax and church tax (for members of the Lutheran Church of Denmark). The national tax is calculated as a progressive tax divided into three brackets. The municipal, church and county taxes are calculated on a flat rate basis.

Further, social contributions to a labour market fund (8%) and a special pension contribution (1%) have to be paid. However, the pension contribution has been suspended for 2004-2007.

The marginal tax rate for individuals is up to 63% including social contributions

Apart from income taxation Denmark has taxes on capital gains, payrolls in VAT exempt businesses, real estates, home ownership, gifts and inheritance etc.

Denmark has duties on motor vehicles, spirits and tobacco products. Denmark also has levied taxes on carbon dioxin, energy, water consumption and waste disposal.

Stamp duties are only payable in respect of certain insurance documents. Registration duties are applicable in respect of title to land and mortgages. Registration duties are also imposed on acquisitions and legal charges on ships and aircrafts.

Denmark has special taxes on enterprises engaged in oil exploration and extraction and related activities and a special tonnage tax scheme.

Value added tax is levied at a rate of 25% (2006). Except for VAT exempt transactions there is no reduced rates in respect of certain products and services.

## 1.2 Main sources of law

The main source of Danish tax law is the statute of 1922 on Income Taxation to the State. However, during the last 85 years the Danish Parliament has adopted numerous acts, which make taxation in Denmark a very complex matter.

## 1.3 The Danish tax administration structure

In Denmark taxes, customs and duties are administered through the Danish Tax and Customs Authority, "SKAT", which is divided into a number of regional offices.

## 2. INCOME TAXES AS APPLIED TO BUSINESS ENTITIES AND INDIVIDUALS

### 2.1 Corporations

There are two forms of corporations in Denmark, private limited companies – in Danish "anpartsselskab" or in abbreviated form "ApS" - and public limited companies – in Danish "aktieselskab" or in abbreviated form "A/S". For an A/S a minimum share capital of DKK 500,000 is required. For an ApS the capital requirement is DKK 125,000. Both types of corporations must be registered with the Danish Commerce and Companies Agency.

Apart for the capital requirement the requirements for the companies are much alike. However, the rules applying to an ApS tend to be less formal and less restrictive.

#### 2.1.1 Filing of tax returns and payment of corporation taxes

##### 2.1.1.1 Filing date

Normally, the corporation tax year is the calendar year but companies may also select an income year differing from the calendar year. The annual income return must be filed 6 month after the end of the fiscal year of the corporation. However, if the tax year ends in the period between 1 January and 31 March the tax return must be filed on or before 1 July.

2.1.1.2 Tax payment

Companies pay taxes on a current year basis. The taxes are due as an account payment on 1 March and 1 November.

2.1.2 Calculation of income/profit taxes

The tax provisions discussed below are those most commonly applied in determining the taxable income of a company subject to full tax liability in Denmark.

As a general rule Danish companies are subject to taxation on their worldwide income. However, according to the new rules Danish companies are – as a starting point – no longer subject to taxation on income related to permanent establishments or real estates in foreign countries except

- in respect of income from the operation of ships or aircraft in international traffic, and
- when Denmark according to a tax treaty or other international agreement has been granted the taxation right.

If a company is subject to limited tax liability the taxable income is determined as if the company was subject to full tax liability. However, only income/gains and costs/losses derived from the source in question are taxable in Denmark.

2.1.2.1 The taxable income

The taxable income is determined as taxable income and capital gains less deductions, losses and depreciations.

*(1) Taxable income*

In general any income is taxable when subject to full tax liability.

As a theoretical rule, capital gains are exempt from tax unless otherwise provided in the tax legislation. In practice, however, most capital gains are taxed at the regular corporate tax rate of 28%, as described below.

Capital gains on *shares* owned for a period of less than 3 years are taxable income and are taxed accordingly. Losses on such shares may be set off against taxable income from sales of other shares sold within 3 years of acquisition.

Capital gains on shares owned for a period of 3 years or more are not taxable. Losses on such shares are, accordingly, not deductible. However, companies selling and purchasing shares as a business activity (e.g. security traders), are taxable on all income from such business and may deduct any losses.

Special rules apply to shareholdings in investment companies (such as e.g. UCITS) as shares in such companies are taxed on an accruals basis.

Companies are subject to tax on all capital gains and losses on *bonds*, debentures and similar financial instruments and on liabilities irrespective of the currency and the interest rate on the debt or liabilities. Capital gains on futures and options are also subject to tax. Exemptions are made in respect of intra-group debts.

Capital gains on convertible bonds are treated as capital gains on shares.

Capital gains on *real estate* are taxable. Until the year 1998 the basis of taxation on gains realised after 3 years of ownership was reduced by 5% annually, up to a maximum overall reduction of 30%. Thus, the selling company was taxed on 70% of the capital gain of a sale after 8 years or more of ownership. The reduction of the tax base is phased out during the years 1999-2008. The phase-out implies that no reduction of the tax base will be achieved if real estate is sold in the year 2008 or later.

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

As a general rule there is no capital gains tax in respect of operating equipment. A sale of such equipment may, however, result in taxation of recaptured depreciations.

## *(2) Deductions and depreciations*

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

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 11,300 (2006) or an estimated life span of less than 3 years may be fully depreciated in the year of acquisition.

Expenditures relating to 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 year of acquisition. In the following year 50% may be depreciated. The tax authorities may, however, allow the normal depreciation rules to be applied.

Buildings used for production or other business purposes – but not offices - may as the main rule be depreciated on a straight-line basis with 5% annually.

Acquired goodwill and other intangible rights, patents, trademarks, etc. may be depreciated with up to 1/7 of the acquisition amount 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 with a proportionate annual percentage of the acquisition amount during the period of exclusivity.

#### 2.1.2.2 Tax rate

The applicable corporate tax rate is 28%.

#### 2.1.2.3 Tax losses

With effect from 1 January 2002 losses may be carried forward indefinitely. Losses deriving from previous years may only be carried forward for up to 5 years. Carry-back is not possible.

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

#### 2.1.2.4 Transfer pricing

The Danish transfer pricing legislation is based on the general arm's length principle. The rules imply that all transactions between connected parties must be concluded on general market terms as if the parties to the transactions had been independent entities (the arm's length principle). The Danish practise in the transfer-pricing field is in accordance with the OECD Guidelines.

The Danish Parliament has also adopted rules on transfer pricing documentation. The legislation, which was amended in 2005, implies that affiliated companies shall provide information in the tax return as to the nature and extent of transactions with associated enterprises. In order to ensure compliance with the arm's length principle connected parties are subject to a duty provide information in the tax return of the nature and extent of controlled transactions, and a duty to prepare written documentation on how prices and other terms have been fixed. The Danish tax authorities have issued a transfer pricing order setting forth a number of requirements as to the content of the transfer pricing documentation.

The definition of controlled entities has recently been expanded to include companies and associations, which are fiscally transparent under Danish tax law (e.g. general partnerships and limited partnerships etc.), but which are governed by "*rules of corporate law, a corporate agreement or articles of association*". Thus, such fiscally transparent entities will for the purposes of the Danish rules on transfer pricing be treated as ordinary taxable entities.

The duty of disclosure and the documentation duty do not apply to companies etc., which are subject to the special tonnage tax regime.

As another exemption small and medium sized companies are only obliged to prepare transfer pricing documentation in respect of controlled transactions with companies etc. in "tax heavens", i.e. companies in countries outside the EU or the EEA and with which Denmark has not entered into a tax treaty. Furthermore a general exemption applies to controlled transactions that in respect of either volume or frequency are deemed insignificant.

The documentation shall be in writing and of a nature that can provide the basis of an evaluation of whether the prices and conditions are at arm's length conditions. The enterprise must explain which method or methods have been used in order to establish the arm's length price. The question of which methods the enterprise will use to apply the arm's length principle must therefore be discussed and established by the board and/or the daily management.

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

The tax authorities have the possibility of starting a tax case concerning transfer pricing issues for up to 5 years and 5 months after the expiry of the relevant tax year.

#### 2.1.2.5 Joint taxation

On 31 May 2005 the Danish Parliament passed a bill amending the Danish Joint Taxation regime and at the same time lowering the corporate tax rate from 30% to 28%. The majority of the new rules are effective in respect of income years starting on 15 December 2004 or later.

Under the new rules all Danish group companies as well as all permanent establishments and real estates in Denmark owned by foreign group companies will automatically be taxed jointly. 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.

International joint taxation (i.e. joint taxation with foreign group companies) is still voluntary. However, if a group opts for international joint taxation all Danish and foreign group companies as well as all permanent establishments and real estates in foreign countries owned by group companies will have to be included in the joint taxation. Thus, it is no longer possible to include only some foreign group companies under the joint taxation.

If international joint taxation is chosen, such choice will be binding on the group for a period of 10 years. However, a group may choose to terminate an 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 the payment of the tax levied on the consolidated taxable income of the group. In return, any other Danish group companies must pay an amount equal to their portion of the tax levied on the consolidated taxable income of the group to the administrative company. Likewise, foreign group companies may 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 the tax liability of the Danish group companies upon their payment of their respective portions of the consolidated taxable income of the group to the administrative company.

The former joint taxation rules only allowed joint taxation with 100% owned group companies.

Under the new rules, the definition of group companies is extended to include all companies (with minor exceptions), which qualify as group companies within the meaning of the Danish Financial Statements Act.

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 of majority of the members of the senior body of the subsidiary, or in any other way is able to control the subsidiary.

#### 2.1.2.6 Corporations residence

A company, which is either registered in the Danish Commerce and Companies Agency or is effectively managed in Denmark, is subject to full Danish tax liability. All Danish corporations (public limited companies - "aktieselskab" or "A/S" - or private limited companies - "anpartsselskab" or "ApS") must be registered in the Danish Commerce and Companies Agency and are consequently always subject to full tax liability. In case a foreign company is not registered in Denmark, it may still be subject to full tax liability in Denmark if it has its effective management in Denmark. 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.

#### 2.1.2.7 Branch income

Even though a company is subject to full tax liability, it will – as a starting point – not be subject to Danish taxation on income related to permanent establishments or real estates in foreign countries. Otherwise income from a branch is taxed as normal business income.

#### 2.1.2.8 CFC - Controlled Foreign Companies

The Danish CFC legislation is generally in compliance with the principle of the CFC legislation in several other countries, including the other Nordic countries. A foreign company is considered a CFC company if the Danish parent company directly or indirectly owns more than 25% of the share capital or controls more than 50% of the voting rights. Further, a CFC company must be taxed at a significantly lower rate than it would

be under Danish tax law (in general below 21%) and the company must carry on business which to a substantial extent is of a financial nature.

The subsidiary will be regarded as being taxed at a significantly lower rate, if the tax paid by the subsidiary is lower than 75% of the tax which would have been payable in Denmark (usually 28%) and the CFC-income (e.g. interest, dividends, royalties, and capital gains on shares, debts, and financial instruments etc.) exceeds 1/3 of the subsidiary's total taxable income. If the taxation of the foreign company is deferred considerably compared to Danish tax legislation the foreign company is deemed to be taxed at a significantly lower rate than it would be under Danish tax law.

Where the CFC legislation applies, the Danish parent company will be taxed directly on financial income of the CFC company in proportion to its ownership interest. Non-financial income of the CFC company will not be affected by the CFC taxation.

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

#### 2.1.2.9 Tax credits

If a taxpayer is liable to pay tax on the same income in Denmark and abroad, relief from such double taxation may be granted through one of the more than 70 bilateral tax treaties to which Denmark is a party. In general, the tax treaties to which Denmark is a party are based on the OECD Model Treaty. Most of the treaties grant relief from double taxation according to the credit principle, and only a small number according to the exemption or matching-credit principles. Relief from double taxation may also be granted under specific Danish tax provisions according to the credit principle.

#### 2.1.3 Withholding taxes

##### 2.1.3.1 Dividends

As a general rule dividends distributed from a Danish company to a foreign shareholder are subject to 28% withholding tax. However, in most tax treaties the Danish withholding tax on dividends is reduced.

No withholding tax is imposed on dividends paid to a foreign parent company if the parent company holds at least 20% of the share capital for a continuous period of at least

12 months during which the dividend is declared. The exemption only applies 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.

Similarly, dividends that a Danish parent company receives from a subsidiary company where the parent company owns at least 20% of the share capital is exempt from tax, provided that the parent company holds the shares for a continuous period of at least 12 months and the dividend was declared during that period. The exemption does not apply to dividend received from investment companies as defined in the Capital gains on shares tax act (including e.g. UCITS).

The required share of ownership is reduced to 15% as from 1 January 2007 and to 10% as from 1 January 2009.

Where the above exemption does not apply, 66% of the dividends received are taxable. Dividends received from the above-mentioned investment companies are fully taxable. Similarly, dividends received by companies selling and purchasing shares as a business activity are fully taxable.

#### 2.1.3.2 Royalties

Withholding tax is also applicable to royalties. A 30% tax is withheld from royalty payments deriving from Denmark in relation to technical know-how, patents, etc. This withholding tax may be reduced under a tax treaty. The withholding tax does not apply if the royalty is attributable to the receiver's Danish permanent establishment, or the receiver is subject to the protection of the EU Interest/Royalty Directive (2003/49/EEA), which prohibits EU member states to retain 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 1 year during which the payment is made.

#### 2.1.3.3 Interest.

As from 1 April 2004 a 30% withholding tax applies in respect of interest payments made between controlled companies. Control exists if a company or individual owns, directly or indirectly, more than 50% of the shares of the relevant company or may exercise more than 50% of the votes of the relevant company.

The withholding tax does not apply if (i) the interest is attributable to the lender's Danish permanent establishment, (ii) the taxation of interest shall be waived or reduced under the EU Interest/Royalty Directive (2003/49/EU), (iii) the taxation of interest shall be waived or reduced under a Danish double taxation convention, (iv) the lender is controlled by a party resident in Denmark or in a country that has concluded a tax treaty with Denmark and such country may tax the lender under its own CFC rules, or (v) the lender is able to demonstrate that it would not be subject to Danish CFC had it been controlled by a Danish entity and has not entered into back-to-back loans with an entity that under Danish law would be deemed a CFC company.

Thus, in practice the withholding tax is primarily applied to in relation to interest paid by Danish companies etc. to certain affiliated legal entities in low-tax countries.

The definition of controlled entities has recently been expanded to include companies and associations, which are fiscally transparent under Danish tax law (e.g. general partnerships and limited partnerships etc.), but which are governed by "*rules of corporate law, a corporate agreement or articles of association*". Thus, such fiscally transparent entities will for the purposes of the Danish rules on withholding tax on interest be treated as ordinary taxable entities.

The limited tax liability on interest is finally fulfilled by the retention of a 30% withholding tax.

#### 2.1.3.4 Capital Gains.

In order to prevent that taxable interest payments are converted to 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 30% withholding tax.

#### 2.1.4 Limited tax liability

Foreign companies, which are not subject to a full tax liability in Denmark, may be subject to limited tax liability in respect of income and gains deriving from sources in Denmark. Limited tax liability for companies applies to e.g. income from permanent estab-

lishments, immovable property situated in Denmark, and dividends or royalties distributed from sources in Denmark. As a main rule foreign companies subject to limited tax liability are liable to corporation tax at a rate of 28% (2006).

#### 2.1.4.1 Permanent Establishment

In Denmark, a permanent establishment is determined in accordance with the principle of article 5 of the OECD Model Treaty. In general, a permanent establishment is a fixed place of business where the operations of an enterprise are carried out in full or in part. This may e.g. include 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. Selling through a Danish independent agent or distributor does not create a permanent establishment in Denmark. However, if the agent 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.

#### 2.1.4.2 Branch Offices.

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, a regulation issued by the Ministry of Industry or a decision made by the Ministry on an individual basis.

All EU companies are free to establish branch offices in Denmark. A branch office may not commence its business activities in Denmark until it has applied for registration with the Danish Commerce and Companies Agency. Transactions between the branch office and its parent must be conducted on an arm's length basis in order to avoid transfer-pricing adjustments.

Generally, interest on loans from other group companies is fully deductible. However, according to a decision of the Danish Supreme Court, a permanent establishment cannot deduct interest on loans granted by its parent since the parent and the branch office are treated as the same legal entity. Special rules apply for financial enterprises.

#### 2.1.4.3 Franchising

Franchise contracts may be negotiated in various forms. In general, a franchise contract is similar to a distributorship agreement in which case, the foreign franchisor does not have a permanent establishment in Denmark. The Danish franchisee will normally be subject to full tax liability in Denmark. Royalties received from the Danish franchisee may be subject to limited tax liability. If the royalties received are subject to tax liability a withholding tax of 30% applies. However, relief may often be granted in respect of the withholding tax in accordance with the applicable tax treaty.

#### 2.1.5 Other matters

##### 2.1.5.1 Anti-avoidance legislation.

A change of domicile by a Danish company or taxable legal entity will normally be considered as liquidation with the same tax effect as a sale. A company may move its activities abroad but to prevent tax avoidance, such a transfer is considered a disposal.

##### 2.1.5.2 Rules on thin capitalisation.

The rules apply to Danish legal entities, which are controlled by Danish or foreign legal entities and have debt (debt is defined as the aggregate of controlled debt and third party debt) to such Danish or foreign legal entities ("controlled debt"). 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 MDKK 10. However, the limitation only applies to the 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 substantiate 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 in the deductibility will only apply for the interest on the controlled debt. The interest, which cannot be deducted, is not requalified as dividends. Thus no withholding tax applies for such payments.

The definition of controlled entities has recently been expanded to include companies and associations, which are fiscally transparent under Danish tax law (e.g. general partnerships and limited partnerships etc.), but which are governed by "*rules of corporate law, a corporate agreement or articles of association*". Thus, such fiscally transparent entities will for the purposes of the Danish rules on thin capitalization be treated as ordinary taxable entities.

##### 2.1.5.3 Liquidation

A Danish company is liable to Danish tax until it is finally dissolved. The fact that a Danish company enters into liquidation does not affect the company's tax liability. When the company disposes of its assets during the liquidation, all gains are taxable according to the general rules described above.

Liquidation proceeds are generally taxed in the same way as dividend. However, liquidation proceeds distributed in the year of liquidation are taxed as capital gains on shares.

## 2.2 Partnerships and Limited liability companies

### 2.2.1 General Partnerships ("interessentskab" or "I/S") - Joint Ventures.

In a general partnership 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. Furthermore, general partnerships are subject to the rules of the Business Enterprises' Act governing business names and powers of procuration, etc. General partnerships in which all partners are limited companies or similar companies must be registered in the Danish Commerce and Companies Agency.

A general partnership as such is not liable to Danish income taxation. The partnership is transparent and taxes are levied on the individual partners in proportion to their shares of the partnership. However, as a general rule a limited partner is not allowed to make deductions which exceed his/her liability in respect of 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 such permanent establishment.

A joint venture is not a specifically defined legal entity in Denmark. A joint venture may be established as a general, limited or other form of partnership or profit-sharing arrangement. The joint venture is governed by a joint venture agreement and by the general principles of Danish law including the Business Enterprises' Act. The joint venture is transparent for tax purposes and any taxes are levied on the individual partners.

### 2.2.2 Limited Partnerships ("kommanditselskab" or "K/S").

A limited partnership 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 enti-

ties. A general partner has unlimited liability whereas a limited partners' 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 Business Enterprises' Act. A limited partnership in which all partners are limited companies or similar companies must be registered in the Danish Commerce and Companies Agency.

A limited partnership as such is not liable to Danish income taxation. The partnership is transparent and taxes are levied on the individual partners in proportion to their shares of the partnership. Depending on the nature of the business carried on by the limited 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 incomes and gains derived from such permanent establishment.

### 2.2.3 European Economic Interest Grouping (EEIG) ("Europæisk økonomisk firma-gruppe" or "EØFG")

An EEIG may be established in the pursuance of EEC 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 EEC regulation, 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.

### 2.3 Foundations and associations

In general, foundations and associations must file an annual tax return form. Foundations and association are in general taxed in the same way as corporations.

Contributions to associations and foundations are generally tax-exempt. However, contributions, which is earmarked for distribution, and contributions, which increase the basic capital of a private settlement fund, are taxable income. Furthermore, contribution to the founding of such a foundation is subject to a tax of 20%.

Foundations and association may set off distributions against its annual income when the distribution is given pursuant to the objective of the entity in question.

2.4 General tax considerations prior to establishment of a business in Denmark - subsidiary vs. branch office.

There are several differences between taxation of subsidiaries vs. branch offices (permanent establishments).

A Danish subsidiary of a foreign company or a foreign company having its effective management in Denmark is subject to full tax liability and will generally be taxed on its world-wide income excluding income related to permanent establishments or real estates in foreign countries. Provided the effective management of a foreign company is situated outside Denmark, the foreign company having a Danish branch office is only subject to limited tax liability.

Branch profits are subject to corporation tax at the same rate as subsidiaries. The computation of taxable income is basically the same for a branch office as for a subsidiary. Both entities must base their inter-company transactions on the arm's length principle and both are considered as independent entities for tax purposes. However, as regards branch offices certain exceptions apply. For example interest on loans paid by the branch office to the foreign head office is not deductible. Special rules apply to financial institutions. Profits of the branch office may be remitted to its head office free of withholding tax, whereas dividends remitted from a subsidiary to its foreign parent company are subject to 28% withholding tax or such reduced rate as provided for in the applicable tax treaties.

However, no withholding tax applies to dividends distributed from a company resident in Denmark to a foreign parent company provided the foreign parent company holds at least 20% of the share capital of the Danish subsidiary for a continuous period of at least 1 year during which period the dividend is distributed. The exemption from withholding tax only applies if the foreign parent company is resident in either another EU-country or in a country with which Denmark has entered into a tax treaty according to which Denmark must grant relief from withholding tax.

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

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

Capital gains may arise when a branch office is transferred to a Danish subsidiary. However, according to special rules on "contribution of assets", such 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 in 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.

## 2.5 Individuals

### 2.5.1 Tax liability

As a general rule an individual is liable to full tax liability if he has his resident in Denmark or he is present in Denmark for a period of 6 month.

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. Limited tax liability applies to income from remuneration in respect of employment exercised in Denmark, immovable property situated in Denmark, and dividends or royalties distributed from sources in Denmark.

In the case of a dual residence Denmark has entered into tax conventions with most states as listed below. The conventions are generally in accordance with the OECD model convention.

### 2.5.2 Tax rate

Danmark is a high-tax country and the marginal income tax rate in Denmark is approximately 63%, including church tax and social contributions (2006).

The tax levied consists of a base tax of 5.48 % (2006), a surtax of 6.0%, which is calculated on the income that exceeds DKK 265,500 (2006), and a top-tax rate of 15.0%, which is calculated on income that exceeds DKK 318,700 (2006). Further, local taxes (approx. 32,6%) have to be paid.

Additionally, a labour market fund contribution of 9% is applied (reduced 8% in 2006 and 2007). The labour market fund contribution is a gross tax and is deducted before the calculation of income tax.

### 2.5.3 Filing of a tax return

The tax year is the same as the calendar year. In March or April following the calendar year an income tax return is sent to the individual taxpayers. The income tax return form includes the figures that are known to the tax authorities. The individual must correct the figures before 1 May if the pre-printed figures are incorrect or incomplete.

#### 2.5.4 Tax payment

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 or if the income tax exceeds the withheld taxes the additional tax must be paid before 1 July in the year preceding the tax year.

#### 2.5.5 Calculation of income taxes

##### 2.5.5.1 The taxable base

###### *(1) Revenues included*

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

Health insurances not associated with the workplace, private use of a company car, housing and other benefits received from the employer are included in the taxable income. The benefits are normally taxable on their market value.

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 and IT benefits.

Employer contributions to pension schemes and life insurances set up in a Danish bank or insurance company are tax-exempt. However, contributions are limited to DKK 42,000 if the pensions or life insurance schemes pay out benefits as a lump sum.

See below for specific information on stock options, warrants and employee share schemes.

Capital gains on shares, bonds, financial instruments and real estate etc. are included in the taxable income.

###### *(2) Deductions*

Individuals are entitled to relief for specific expenses associated with their work – such as e.g. the cost of transportation between home and work or between work places, expenses for unemployment insurance, trade union fees and contributions to early retirement schemes. Further, as a general rule net interest payable 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 in municipal and county taxes.

Self-employed can deduct expenses in full provided that the expenses have been incurred in order to earn, secure or maintain the self-employment income.

#### 2.5.5.2 Stock option and warrants

Danish tax legislation offers the following tax schemes for share-based employee incentives:

*Section 4 of the Danish State Tax Act and section 16 of the Danish Tax Assessment Act:*

As a general rule warrants and shares etc. are treated as cash remuneration and their value is taxed at grant as ordinary employment income at a progressive rate up to 63% (including social contributions). Any subsequent gain on the shares received is taxed as a capital gain at a rate of 43% (28% up to DKK 44,300 in 2006).

*Section 28 of the Danish Tax Assessment Act:*

In respect of share options granted to employees no tax applies at grant, but the value of the options is taxed at exercise or sale as ordinary employment income at rates up to 63%. Any subsequent gain on the shares is taxed as a capital gain at a rate of 43% (28% up to DKK 44,300 in 2006).

*Section 7A of the Danish Tax Assessment Act:*

This tax-exemption may apply to general employee share schemes where shares or share options are granted to all employees or groups of employees. Where the tax-exemption applies no tax will fall due at grant or exercise, but any gain on the shares at disposal is taxed as a capital gain at a tax rate of 43% (28% up to DKK 44,300 in 2006).

Employees may receive shares in their employing company or its parent company tax-free up to a value of DKK 8,000 (2006). However, the shares must be restricted from transferability in seven years.

Further, the employee may receive share options free of tax provided that the benefit received does not exceed 10 % of the employee's annual salary. Following exercise, the shares must be restricted from transferability in five years.

However, although restrictions of a general nature are acceptable the favourable provisions are conditioned on the qualifications that the right must be granted to all employees of the company, and that no special privileges should be granted to any category of employee.

*Section 7H of the Danish Tax Assessment Act:*

This relatively new tax scheme has made it possible to postpone taxation of options and shares until the shares acquired under the incentive scheme are disposed of even though the shares are not granted as part of a general employee share scheme. The share gain will be taxed as a capital gain at a tax rate of 43% (28% up to DKK 44,300 in 2006).

Under the new provision in section 7H of the Danish Tax Assessment Act, employees receiving share-based incentives as part of their employment remuneration may elect taxation under the new scheme provided that:

1. The employee and the company agree in writing to opt for the new regime;
2. The value of the shares, options, and warrants does not exceed 10% of the employee's annual salary; or the exercise price for the options is at least 85% of the market value of the underlying shares and the value of any shares received does not exceed 10% of the employee's salary;
3. The shares or options are offered by the employee's employer company or a group company;
4. The offered shares or the underlying shares to be acquired upon exercise of the options or warrants are shares in the employer company or a group company;
5. No special share classes are created for the shares;
6. The employee may not be entitled to assign options prior to exercise;
7. Either the employee or the employer has a right to receive or issue shares, respectively, i.e. instruments that can only be settled against cash do not qualify for the scheme;

8. The company's external legal counsel or accountant must certify that the above conditions are met; and
9. A copy of this attestation and of the agreement regarding the application of section 7H must be filed with the tax authorities within a certain time limit.

Where all the above conditions are met, the employee will not be taxed until the shares received at exercise are sold. The actual taxation at that point in time will usual be at a tax rate of 43% (28% up to DKK 44,300 in 2006).

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

#### 2.5.5.3 Expatriate regime

A special expatriate tax regime applies to foreigners employed by a Danish-resident employer for no longer than 36 months during a 10-year period. In connection with such employment contracts, the salary income may at the choice of the employee be effectively taxed at a flat rate of 25% instead of the ordinary rates ranging from approximately 38% to 63%. However, when using the scheme, the employee will not be allowed to make any deductions in the taxable income. To qualify for the scheme, individuals must i.a. reside in Denmark during the contract period and the salary to individuals, who have not been officially approved as researchers, must exceed DKK 58,600 (2006) per month plus social contributions.

#### 2.5.6 Withholding taxes

Salaries as well as labour market fund contributions and mandatory contributions to the supplementary pension scheme are generally subject to withholding tax at source meaning that the employer will withhold and pay the due tax directly to the tax authorities based on the employees' preliminary tax assessment and wage tax card.

### 3. OTHER TAXES

#### 3.1 Value added tax

VAT is paid in respect of the provision of goods and services against consideration in Denmark. Enterprises calculate their VAT liability as the difference between VAT paid on purchase and VAT levied on sales. The VAT rate is 25%.

3.2 Carbon dioxide tax and other environmental levies

A levy on the emission of carbon dioxide and the use of energy and natural resources (electricity, water, oil and gas, waste disposal etc.) by companies and enterprises applies. It is possible to obtain compensation from the government in order to offset, in whole or in part, the negative effects of the taxes on energy consuming companies and enterprises.

3.3 Payroll tax

VAT exempt businesses are liable to a payroll tax ("lønsomsafgift") at a rate between 2,5 and 5,08 of the total payroll of the company – or in some cases 90% of the payroll.

3.4 Registration duties

Registration duties are imposed in respect of certain registrations such as registration of title to land, mortgages and ownership reservations. The rate of duty on registration of ownership to real estates is 0.6% of the purchase price whereas the rate of duty on mortgages and ownership reservations is 1.5% of the secured claim. Furthermore duties are imposed in respect of certain registrations of rights concerning ships and aircrafts.

3.5 Stamp duties

Stamp duties are imposed in respect of certain insurance documents. Premium taxes apply in respect of insurance documents relating to motor vehicles and pleasure crafts.

3.6 Special gas and oil tax

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

3.7 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.

3.8 Other duties

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

Also Denmark exercise duties on spirits and tobacco products.

3.9 Tax on capital or net worth

There is no tax on capital net worth in Denmark.

3.10 Real estates tax

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

3.11 Home-ownership tax

Homeowners are liable to a tax on the value of property houses. The tax rate is 1 pct. However, the tax rate is 3 pct of such part of the value that exceeds a limit of DKK 3.040.000 (2006).

4. INHERITANCE AND GIFT TAX

4.1 Inheritance

Inheritance tax is payable by the estate in case the deceased at his dead had Denmark as his country of residence. Further, inheritance tax is payable on real estates or estates related to a permanent establishment situated in Denmark.

As a general rule the tax rate is 15 % of the value that is inherited by a relative of kin. Inheritance of the spouse is free of any taxation. Inheritance of others is as a general rule subject to a 40 % tax.

The basis for calculating inheritance tax is the value of all the deceased estate. Pensions and life insurances are included in the tax basis unless the pension and life insurance falls to a spouse. The value of the estate is generally the fair market value.

4.2 Gifts

As a general rule gifts are taxed as the donee's personal income. However, a donor's gift to a donee of kin is tax-free provided that the value of the gift does not exceed 53,900 (2006). Value's exceeding 53,900 (2006) is taxed by 15 pct.

Gifts to spouses are not subject to any taxation.

Denmark has entered into Treaties on inheritance and gifts tax with Finland, Germany, Iceland, Italy, Norway, Sweden, Switzerland and USA.

## 5. OTHER MATTERS

### 5.1 Foreign exchange controls

Denmark does not impose foreign-exchange control. However, certain transactions must be reported to the Danish tax authorities for tax-control purposes.

### 5.2 Incentives

Certain types of incentives or favourable credit facilities can be applied for, when certain assets are acquired in Denmark. Certain concessions can be granted, when industrial or other business enterprises are established in development areas. Other incentives can be applied for environmental protection energy saving and recycling projects. Further, grants are given to develop new products and technologies. Incentives also concern education.