

Denmark Dispute Resolution Profile

(Last updated: 22 February 2019)

General Information

- **Denmark tax treaties are available at:**

<http://www.skm.dk/love/internationalt/dobbeltbeskatningsoverenskomster> or at the legal guide about Danish double tax treaties and agreements (in Danish) on www.skat.dk

- **MAP request should be made to:**

Concerning double taxation due to transfer pricing or attribution of profits to a PE:

Mr. Bo Darling Larsen
Large Companies – Competent Authority
Skattestyrelsen/Danish Tax Agency
Sluseholmen 8 B, 2450 Copenhagen SV, Denmark or
by email to store-selskaber-sikker-post@sktst.dk

Concerning all other tax matters:

Mr. Jesper Leth Vestergaard
Law Department – Competent Authority
Skattestyrelsen/Danish Tax Agency
Østbanegade 123, DK-2100 Copenhagen Ø, Denmark or
by email to juraskat@sktst.dk

- **APA request should be made to:**

Mr. Bo Darling Larsen
Large Companies – Competent Authority
Skattestyrelsen/Danish Tax Agency
Sluseholmen 8 B, 2450 Copenhagen SV, Denmark or
by email to store-selskaber-sikker-post@sktst.dk

Denmark Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
A. Preventing Disputes				
1.	Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published?	Yes	In the legal guide, Den Juridiske Vejledning, on www.skat.dk	General agreements on DTC (in Danish only)
2.	Are bilateral APA programmes implemented? If yes:	Yes	Only on the basis of each DTC’s article equivalent to article 25 of the OECD Model Tax Convention. Read more in the legal guide, Den Juridiske Vejledning, on www.skat.dk	Advance Pricing Arrangement (in Danish only) About transfer pricing (in English) About transfer pricing (in Danish)
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	Yes	Both the financial year of the submission of the APA request and earlier financial years if the other CA accepts the same changes.	APA roll back (in Danish)
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	No	Expired tax years preceding the submission of the APA request will be considered to be roll back years.	-
c.	<ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer’s request for bilateral APA assistance, publicly available? 	Yes	<p>In the legal guide, Den Juridiske Vejledning, on www.skat.dk</p> <p>A request for a bilateral or multilateral APA must be submitted in writing (email requests are accepted) and must as a minimum contain:</p> <p>A description of the company, the group and the market, a description of the controlled transactions including an analysis of functions, assets and risks of each party to the transactions, a comparability study, a choice of transfer pricing method and how</p>	Advance Pricing Arrangement (in Danish only) About transfer pricing (in English) About transfer pricing(in Danish)

Denmark Dispute Resolution Profile – Preventing Disputes

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			it will be implemented including critical assumptions and annual APA compliance reports.	
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	No	Not in Denmark but the other country may charge a fee to their taxpayer.	-
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	No	Only the total number of APA's reached and the number of cases under scrutiny at the end of the year in the annual report to the Danish Parliament and in the statistics publications from the EU.	<u>Search: Transfer pricing-redegørelse</u>
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties?	Yes	Concerning transfer pricing: Through the prescribed use of the OECD Transfer Pricing Guidelines as the basis for all transfer pricing adjustments and through biannual seminars for all transfer pricing auditors/examiners.	-
4.	Is other information available on preventing tax treaty-related disputes?	No	-	-

Notes:

1. An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the ***OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*** (“Transfer Pricing Guidelines”).

2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

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B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	Both according to most DTC and within the EU according to the EU Arbitration Convention.	<u>On MAP in transfer pricing cases (SKAT's legal guide in Danish)</u> <u>About transfer pricing(in English)</u> <u>About transfer pricing(in Danish)</u>
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	If a specific DTC contains a treaty anti-abuse clause the issue can still be discussed between the two competent authorities.	-
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	-	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	An audit settlement is not an obstacle for MAP.	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	If the bona fide adjustment can be documented by an official document from the other tax jurisdiction.	-
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No	-	-
11.	Are taxpayers allowed to request MAP assistance in cases where the taxpayer has	Yes	In principle, the two instruments can be handled in parallel but often the taxpayer makes a protective	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction?		request/complaint to stay within the time limits of both instruments and asks either the judicial party or the competent authority not to proceed before the other party has terminated the preferred instrument.	
12.	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	If the adjustment of the Danish Tax Agency is confirmed by the court, the taxpayer can still request a MAP to relieve the double taxation, fully or partially. If the judicial or administrative remedies lead to the cancellation of the adjustment, there is no double taxation and no reason for requesting a MAP.	<u>About parallel access to MAP and national legal remedies (the legal guide only in Danish)</u>
13.	Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance, publicly available?	Yes	There are no specific format requirements. Only a list of types of information and documentation to include with the MAP request.	<u>On MAP requests in general (the legal guide, only in Danish)</u> <u>On the EU Arbitration Convention (the legal guide, only in Danish)</u>
14.	Are there specific timeline for the filing of a MAP request?	Yes	Within the time limit of the specific DTC equivalent to article 25 (1) second sentence. In most cases 3 years from the date of the tax adjustment decision.	<u>On time limitations for MAP requests (the legal guide, only in Danish)</u> <u>Dobbeltbeskatningsoverenskomster</u>
15.	Are guidance on multilateral MAPs publicly available?	No	Denmark is not against multilateral MAP but has no experience in this field.	-

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16.	Are tax collection procedures suspended during the period a MAP case is pending?	See detailed explanation	The taxpayer can apply for a suspension of the tax collection upon the submission of a MAP request.	<u>On suspension on tax collection (henstand) (the legal guide, only in Danish).</u>
17.	Are there any fees charged to taxpayers for a MAP request?	No	-	-
18.	Is there any other information available on availability and access to MAP?	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
C. Resolution of MAP Cases				
19.	Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers?	Yes	24 months.	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	Only communicated to the OECD and the EU and published by these organisations.	-
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	Yes	Possible in some specific non transfer pricing cases.	-
22.	Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation?	Yes	The role and responsibility of the competent authority are described in the legal guide on www.skat.dk .	<u>About the competent authority in the legal guide (in Danish only)</u>
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties? If not:	Yes	Only in the EU Arbitration Convention, which only covers cases about transfer pricing and attribution of profits to PE's. From 1 July 2019, arbitration will also be possible under the EU Arbitration Directive. Subject to approval by the Danish parliament, Denmark will choose to apply Part VI (Arbitration) of the MLI. Arbitration under the MLI will, if Part VI is applied, be an option, and the arbitration clauses in Denmark's tax treaties with Israel, Switzerland and the new treaty with Japan will become effective	-

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			once arbitration provisions under the MLI become effective between Denmark and another country.	
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? 	N/A	-	-
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	N/A	-	
24.	<p>Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?</p> <p>If yes:</p>	Yes	Both access to MAP and to the domestic Tax Tribunal is explained as parallel options in the Danish Tax Agency's final transfer pricing adjustment decisions sent to the taxpayers. There is also a description of this in the legal guide on www.skat.dk .	<u>About parallel access to MAP and national legal remedies (only in Danish)</u>
a.	<ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice? 	Yes	It is only under very specific circumstances that the competent authority will be able to reach a different result than the National Tax Tribunal or the Court.	<u>About court decisions versus MAP (only in Danish)</u>
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
26.	Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)?	Yes	Article 9(2) is missing in Denmark's Tax Treaties with Belarus, Belgium, Brazil, Bulgaria, Kenya, Korea, Malaysia, Montenegro, Romania, Tanzania, Trinidad & Tobago and Zambia.	-
27.	Is there any other information available on resolution of MAP cases?	No	-	-

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D. Implementation of MAP Agreements				
28.	Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?	No	As quick as possible.	-
29.	Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid?	No	As quick as possible. Often within one month from the receipt of the taxpayers acceptance of the MAP agreement.	-
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	-	-
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-