

Aligning tax returns, transfer pricing documentation and financial statements

Best practices for compliance



Agenda

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Why is this important? History and future

Why is this important? Focus from the tax authorities

Oplysningerne anvendes til digital udsøgning af kontrollsager vedr. kontrollerede transaktioner, til brug for Skattestyrelsens opgave med at sikre at enhver betaler den skat, den pågældende skal, jf. SKL § 1. Oplysnings-



Specific controlled transactions in focus (intangibles, financial transactions etc.)



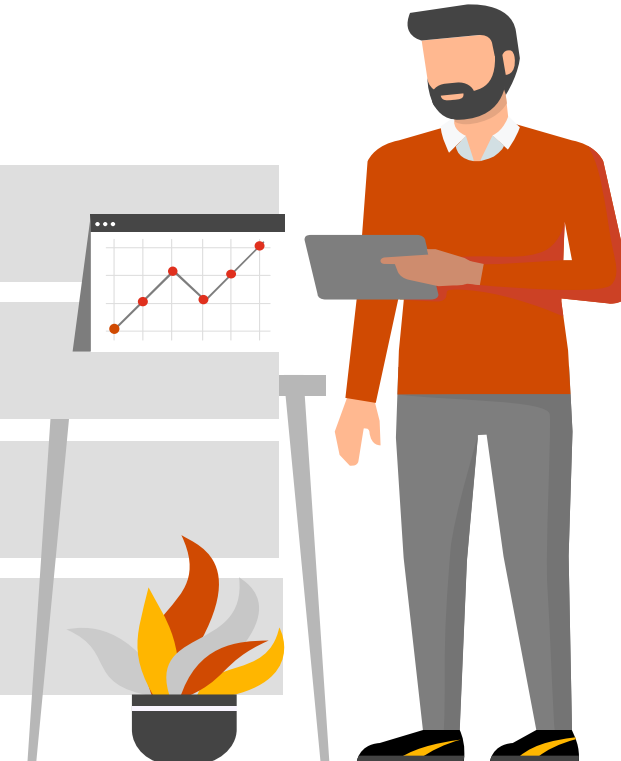
Alignment with the CBC-reporting and notification



Alignment with Transfer pricing documentation

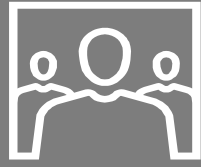
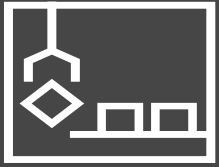


Alignment with information about A-income (e.g. for identification of PEs)



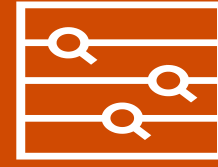
History – Controlled transactions form

L 84 af 14. november 1997
(effective from FY1998.
Foreign transactions only)



2004/1 LF 140
(effective from FY2005
Danish and foreign
transactions)

Effective from
FY2014
The form is part
of the digital tax
return for
companies*



Effective from FY2019
The limit of 5,000 DKK is
removed from the form

Several changes to
requirements and format

*For cooperatives, hydrocarbon companies and natural persons which are covered by the rules in Tax Control Act, Chapter 4 and which cannot make digital reporting, it is possible to meet the obligation by submitting form 05.021 (DK) or 05.022 (ENG).

History – Controlled transactions form

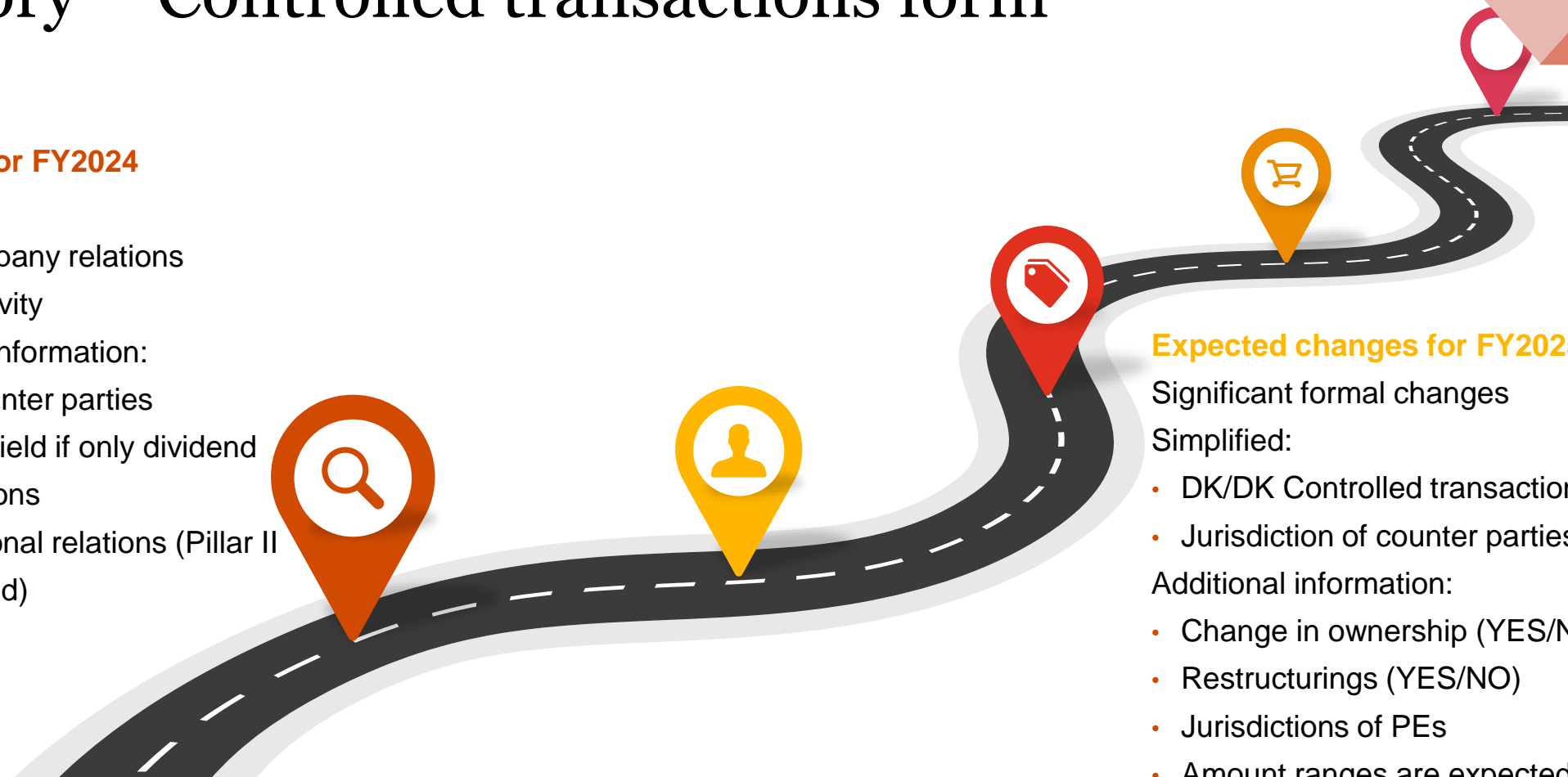
Changes for FY2024

Simplified:

- Intercompany relations
- Main activity

Additional information:

- Loan counter parties
- Specific field if only dividend transactions
- International relations (Pillar II threshold)



Expected changes for FY2025

Significant formal changes

Simplified:

- DK/DK Controlled transactions
- Jurisdiction of counter parties.

Additional information:

- Change in ownership (YES/NO)
- Restructurings (YES/NO)
- Jurisdictions of PEs
- Amount ranges are expected to be replaced by amount in total DKK million.

Note: the changes are still under consideration by the Danish tax authorities



Legal Framework

Legal framework (extract)

1

Tax Assessment Act (*Ligningsloven*), § 2
(arm's length principle)

Note: DK/DK transactions covered

2

The Danish Tax Control Act (*Skattekontrolloven*), Chapter 4
§ 37 (definitions)

3

The Danish Tax Control Act, Chapter 4
§ 38 (Obligation to provide information / Controlled Transactions form)

Note: DK/DK transactions covered

FSR proposed to exclude DK/DK transactions going forward

4

The Danish Tax Control Act, Chapter 4
§ 39-40 (Obligation to prepare TPD and exception from TPD-requirements)

Note: DK/DK transactions are generally excluded





Controlled transactions form structure

Part 1: General information

Controlled transactions form structure

Part 1: General information (1/3)

For FY2024 (new)

- Contact information and accounting information has to be provided in the beginning of the digital tax return (on TastSelv Erhverv).
- Information on Intercompany relations and Main activity is excluded from the controlled transactions form.
- All the fields apart from International Relations are predefined by YES in field 059 and YES in field 067. Field 068 is only predefined by YES in field 059.

<u>Kontrollerede transaktioner</u>				
		Feltbeskrivelse	Feltinfo	Felt nr. Udfyld felt
Has the taxpayer in whole or in part of the income year belonged to the entities covered by the Tax Control Act, Section 37, subsection 1, no. 6 on controlled transactions?	059			
Has the taxpayer during the income year had controlled transactions (commercial or economic) covered by the Tax Control Act, Section 37, subsection 1, no. 6?	067	Har den skattepligtige enhed i hele eller dele af indkomståret tilhørt kredsen omfattet af skattekontrollovens § 37, stk. 1, nr. 6 om kontrollerede transaktioner? *		059 <input checked="" type="radio"/> Ja <input type="radio"/> Nej
Have there been controlled debt over DKK 10 million DKK, and does the total debt capital incl. controlled debt exceed 4 times equity?	068	Har den skattepligtige i løbet af indkomståret haft kontrollerede transaktioner (handelsmæssige eller økonomiske) omfattet af skattekontrollovens § 37, stk. 1, nr. 6? *		067 <input checked="" type="radio"/> Ja <input type="radio"/> Nej
		Har der været. kontrolleret gæld over 10 mio. kr., og er den samlede fremmedkapital inkl. kontrolleret gæld mere end 4 gange egenkapitalen? *		068 <input type="radio"/> Ja <input checked="" type="radio"/> Nej

Controlled parties and transactions

Definition in Tax Control Act § 37, no. 1 (controlling influence)

Controlling influence means:

- Ownership or control of voting rights, such that more than 50 per cent of the share capital is directly or indirectly owned or more than 50 per cent of the votes are held.
- When assessing whether the taxpayer is considered to have controlling influence over a legal person, or whether a controlling influence is exercised over the taxpayer by a legal or natural person, shares and voting rights held by affiliated companies, by personal shareholders and their close relatives, or by foundations or trusts established by the parent company itself or by the aforementioned affiliated companies, close relatives, etc. or by foundations or trusts established by these are included.
- Similarly, shares and voting rights held by other company members with whom the company member has an agreement on the exercise of joint controlling influence are included.
- Similarly, shares and voting rights held by a person or an estate jointly with a close relative or jointly with a foundation or trust established by the taxpayer or his/her close relative or foundations or trusts established by these are included.

Note: It is the same group of taxpayers who are covered by the arm's length principle in Section 2 of the Danish Tax Assessment Act and the duty to provide information in Section 38 of the Danish Income Tax Act.

Controlled parties and transactions

Definition in Tax Control Act § 37, no. 6 (controlled transactions)

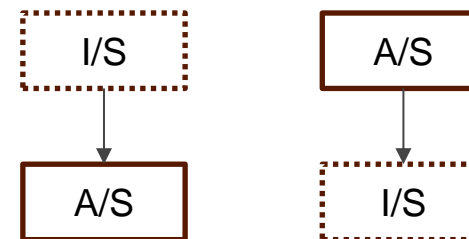
Controlled transactions mean transactions between:

- a) A taxable person and a natural or legal person who exercises a decisive influence over the taxable person,
- b) a taxable person and a legal person over whom the taxable person exercises a decisive influence,
- c) a taxable person and a legal entity that is affiliated with the taxable person,
- d) a taxable person and his permanent establishment located abroad,
- e) a taxable person who is a foreign natural or legal person and his permanent place of business in Denmark or
- f) a taxable person who is a foreign natural or legal person and his hydrocarbon-related business covered by the Hydrocarbon Tax Act (21, no. 1 or 4).

Controlled transactions include all commercial and financial relationships with or without consideration between, for example, a taxable natural person and a legal entity over which a taxable natural person exercises a decisive influence.

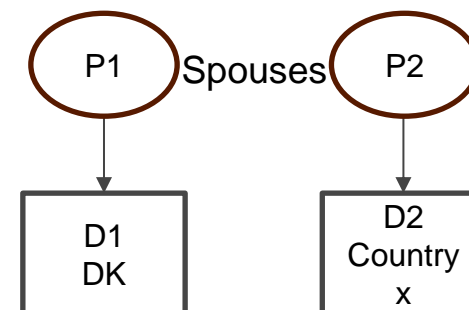
Examples

a) Tax transparent entities



b) Close relatives:

- P1 – **no** controlling influence in D2 and P2 – **no** controlling influence in D1
- D1 and D2 are affiliated.



Controlled transactions form structure

Part 1: General information (2/3)

Has the taxpayer together with group affiliated companies globally fewer than 250 employees, cf. the rules on limited documentation requirements according to section 40, subsection 1 of the Danish Tax Control Act.	503
Does the taxpayer alone or with affiliated enterprises have an annual balance sheet total of less than DKK 125 million?	503a
Does the taxpayer alone or with affiliated enterprises have a annual revenue of less than DKK 250 million?	503b

Note: According to a draft proposal, a company must prepare transfer pricing documentation in Denmark if it has 250 or more employees, or if its turnover exceeds DKK 391 million (previously 250 million) and its balance sheet total exceeds DKK 195 million (previously 125 million).

Potentially with effect for the income year 2025.

- **The group definition** (based on the Capital Gains Act section 4, subsection 2) must be fulfilled at the balance sheet date, i.e. at the end of the financial year.
- The statement includes full-time employees in all of the group's entities (both Danish and foreign).
- The number of employees must be calculated as the average number of full-time employees during the year, cf. the group's official accounts for the income year.
- Turnover and balance sheet total, respectively are calculated after intra-group eliminations.

The taxpayer is subject to the limited documentation obligation if the group, to which the taxpayer is part of, has fewer than 250 employees in total and either has a turnover of less than DKK 250 million or a balance sheet total of less than DKK 125 million. The limited documentation obligation means that the taxpayer only has to prepare and submit a transfer in certain cases.

Group definition – thresholds

Capital Gains Act section 4, subsection 2

Group companies include the following:

- Companies and associations, etc., where the same group of shareholders ...directly or indirectly owns more than 50% of the share capital in each company,
- Companies and associations, etc., where the same group of shareholders ...directly or indirectly controls more than 50% of the voting rights in each company,
- A foundation and companies in which the foundation ...directly or indirectly owns more than 50% of the share capital in each company, or
- A foundation and companies in which the foundation ...directly or indirectly controls more than 50% of the voting rights in each company.

Shareholders as mentioned in Share Capital Gains Taxation Act, section 4(2) (definition of close relatives are discussed above) are considered, in the assessment of the group of shareholders, as one and the same shareholder. When calculating voting rights, votes obtained solely through the transfer of voting rights in connection with securing collateral in shares are disregarded.

Controlled transactions form structure

Part 1: General information (3/3)

In case the Group qualifies for the exception based on the financial thresholds, the Group companies should only prepare and submit TP documentation for controlled transactions:

- with entities established in states with which Denmark has not signed a transfer pricing-relevant **double tax convention (DTC)** and
- which are not members of the EU/EEA, cf. Danish Tax Control Act (40, no. 1).

Not-TP-relevant DTCs

Examples

- Hong Kong
- Iran
- Jordan
- Lebanon
- CIS countries*

Examples

- Jersey
- Guernsey
- Bermuda
- British Virgin Islands
- Cayman Islands

TP-relevant agreements

*Russia, Moldova, Kazakhstan, Belarus, Tajikistan, Kyrgyzstan, Azerbaijan, Armenia, Uzbekistan and Turkmenistan.

Controlled transactions form structure

Part 1: General information (3/3)

Enter the exact number of entities with which there have been controlled transactions	
in Denmark	505
Are all the taxpayer's controlled transactions with Danish entities exempt from the transfer pricing documentation obligation, as a result of that all the entities are taxed according to the same set of rules, cf. Tax Control Act, Section 39, subsection 1?	505a
Enter the exact number of entities with which there have been controlled transactions in other EU/EEA countries	506
Enter the exact number of entities with which there have been controlled transactions in other EU/EEA countries, hereunder permanent establishments	506a
Enter the exact number of entities with which there have been controlled transactions in states outside the EU/EEA with which Denmark has signed a TP-relevant double tax convention	507
Enter the exact number of entities with which there have been controlled transactions in states outside the EU/EEA with which Denmark has signed a TP-relevant double tax convention, hereunder permanent establishments	507a
Enter the exact number of entities with which there have been controlled transactions in states outside the EU/EEA with which Denmark has not signed a TP-relevant double tax convention	508
Enter the exact number of entities with which there have been controlled transactions in states outside the EU/EEA with which Denmark has not signed a TP-relevant double tax convention, hereunder permanent establishments	508a
Are the foreign entities encompassed by the joint taxation in Denmark?	509

Det nøjagtige antal enheder, der har været kontrollerede transaktioner med: i Danmark *	505	<input type="text" value="1"/>
Er alle den skattepligtiges kontrollerede transaktioner med danske enheder fritaget for transfer pricing-dokumentationspligten, som følge af at alle enhederne beskattes efter samme regelsæt, jf. skattekontrollovens § 39, stk. 1? *	505a	<input type="radio"/> Ja <input type="radio"/> Nej
Det nøjagtige antal enheder, der har været kontrollerede transaktioner med: i de øvrige EU-/EØS-lande *	506	<input type="text"/>
Det nøjagtige antal enheder, der har været kontrollerede transaktioner med: i de øvrige EU-/EØS-lande, heraf faste driftssteder *	506a	<input type="text"/>
Det nøjagtige antal enheder, der har været kontrollerede transaktioner med: i stater uden for EU/EØS, som Danmark har en dobbeltbeskatningsoverenskomst med *	507	<input type="text"/>
Det nøjagtige antal enheder, der har været kontrollerede transaktioner med: i stater uden for EU/EØS, som Danmark har en dobbeltbeskatningsoverenskomst med, heraf faste driftssteder *	507a	<input type="text"/>
Det nøjagtige antal enheder, der har været kontrollerede transaktioner med: i stater uden for EU/EØS, som Danmark ikke har en dobbeltbeskatningsoverenskomst med *	508	<input type="text"/>
Det nøjagtige antal enheder, der har været kontrollerede transaktioner med: i stater uden for EU/EØS, som Danmark ikke har en dobbeltbeskatningsoverenskomst med, heraf faste driftssteder *	508a	<input type="text"/>
Indgår de udenlandske enheder i den danske sambeskatning *	509	<input type="radio"/> Ja <input type="radio"/> Nej



Controlled transactions form structure
Part 2: Profit and loss account
Part 3: Balance sheet

Controlled transactions form structure

Part 2: Profit and loss account

Sale of goods and other current assets	510a, b og d
Purchase of goods and other current assets	511a, b og d
Income from services, including management fees and allocated cost	512a, b og d
Expense for services, including management fees and allocated cost	513a, b og d
Rental and leasing income	514a, b og d
Rental and leasing expenses	515a, b og d
Income from intangible assets	516a, b og d
Expenses for intangible assets	517a, b og d
Finance income	518a, b og d
Finance cost	519a, b og d
Subsidies received, including waivers of loans	520a, b og d
Subsidies given, including waivers of loans	521a, b og d
Income from captive insurance	537 a, b og d
Expenses for captive insurance	536 a, b og d
Have there been controlled transactions of other income?	522a, b og d
Have there been controlled transactions of other expenses?	523a, b og d

Ad b:

Enter for each individual type of transaction the total gross value of all the controlled transactions with all the associated entities within one of the following ranges:

1 = (DKK 0 - DKK 1 million),
2 = (>DKK 1 million - DKK 5 million)
3 = (>DKK 5 million - DKK 25 million)
4 = (>DKK 25 million - DKK 100 million)
5 = (>DKK 100 million - DKK 250 million)
6 = (>DKK 250 million - DKK 500 million)
7 = (>DKK 500 million - DKK 1 billion)
8 = (more than DKK 1 billion)

Ad d:

Which states have the controlled transactions in question been with:

- **only in Denmark.**
- **also in the EU/EEA;** i.e. also in Denmark and/or in the other EU/EEA countries.
- **also in states outside EU/EEA, which Denmark has a TP relevant DTC with;** i.e. in Denmark and/or in the other EU/EEA countries.
- **also in states outside EU/EEA, which Denmark does not have a TP relevant DTC with;** i.e. in Denmark, in the other EU/EEA countries and/or in states outside EU/EEA countries, which Denmark has a DTC with.

Controlled transactions form structure

Part 3: Balance sheet

Sale of intangible assets	524a, b og d
Purchase of intangible assets	525a, b og d
Sale of tangible assets	526a, b og d
Purchase of tangible assets	527a, b og d
Sale of equity investments in group enterprises	528a, b og d
Purchase of equity investments in group enterprises	529a, b og d
Sale of other financial fixed asset investments	530a, b og d
Purchase of other financial fixed asset investments	531a, b og d
Loans from legal or natural persons (maximum amount borrowed in income year)	532a, aa, b og d
Loans to legal or natural persons (maximum amount lent in income year)	533a, aa, b og d
Other financing granted, including financial contracts	534a, b og d
Other financing received, including financial contracts	535a, b og d
Have all the controlled transactions, cf. field 67, consisted of declared dividends (received or distributed)?	539

New

New

Ad b:

Enter for each individual type of transaction the total gross value of all the controlled transactions with all the associated entities within one of the following ranges:

- 1 = (DKK 0 - DKK 1 million),
- 2 = (>DKK 1 million - DKK 5 million)
- 3 = (>DKK 5 million - DKK 25 million)
- 4 = (>DKK 25 million - DKK 100 million)
- 5 = (>DKK 100 million - DKK 250 million)
- 6 = (>DKK 250 million - DKK 500 million)
- 7 = (>DKK 500 million - DKK 1 billion)
- 8 = (more than DKK 1 billion)

Ad d:

Which states have the controlled transactions in question been with:

- **only in Denmark.**
- **also in the EU/EEA;** i.e. also in Denmark and/or in the other EU/EEA countries.
- **also in states outside EU/EEA, which Denmark has a TP relevant DTC with;** i.e. in Denmark and/or in the other EU/EEA countries.
- **also in states outside EU/EEA, which Denmark does not have a TP relevant DTC with;** i.e. in Denmark, in the other EU/EEA countries and/or in states outside EU/EEA countries, which Denmark has a DTC with.

Controlled transactions – disclosure in the form

Definition and specific types of transactions

Included (examples)

- Loans and balances - the total maximum loan calculated as the sum of the maximum loan per entity.
- Cash pools - pool balances between the participating group companies (not with the bank), including debts and receivables in the same company during the year. Debts and receivables must be disclosed separately on the form (i.e. the year's highest amount for respectively debts and receivables per company)
- Guarantees /bonds - only consideration (fee) that the guarantor receives from a controlled party for providing the bond are considered a controlled transaction (not principal amount, which is provided against a third party, e.g. a bank).

Specifically included for legal entities

- Declared dividends (received and distributed), including dividends paid by bank transfer
- Salary that is reported as A-income
- All forms of capital increases
- Subsidies / grants (both tax free and taxable).

Controlled transactions – disclosure in the form

Definition and specific types of transactions

Other types of controlled transactions (examples)

- Profit split method allocation
- Allocation of profit to a permanent establishment (PE) – depending on the functional profile of the PE
- Rent (unless covered by service)
- Leasing of operating assets
- Debt waivers
- Debt conversion / issuance of shares
- Capital contributions / capital increase / re-establishment of equity.

Have there been controlled transactions of other income?

.....
522a, b og d

Have there been controlled transactions of other expenses?

.....
523a, b og d

Har der været kontrollerede transaktioner af andre indtægter? *

522a ☐ Ja ☐ Nej

Har der været kontrollerede transaktioner af andre udgifter? *

523a ☐ Ja ☐ Nej

Controlled transactions – disclosure in the form

Permanent establishment

Allocation of income to a permanent establishment shall follow the functional profile of the PE.

The Danish Tax Authorities has indicated that they agree that it is only the "allocation" that should be stated as a controlled transaction in the information form, as illustrated by the following two simple examples:

Example 1. Sales PE

A company has employed salespeople abroad, who constitute a PE. The PE is considered a simple distributor and is remunerated according to the Return on Sale method.

Controlled transaction is COGS (sale of goods)

The Return on Sale remuneration dictates that the PE must achieve an EBIT result of 2% of turnover. It is the calculated **Cost of Goods Sold** (which is the relevant transfer pricing transaction) that must be stated on the Information Form.

Turnover	100
Calculated COGS	-78
Salaries	-10
Other operating expenses	-10
EBIT	2

Example 2. Service PE

A company has employees abroad who perform services for the head office. This is a core activity, so the activity constitutes a PE.

Controlled transactions is Service Fee

The PE is considered a service provider and is remunerated according to the Full Cost mark up method (in this case with a mark up of 5%). It is the calculated **service fee** (which is the transfer pricing relevant transaction) that must be stated on the Information Form.

Calculated service fee	21
Salaries	-10
Other operating expenses	-10
EBIT	1



Controlled transactions form structure
International relations

Controlled transactions form structure

International relations (1/2)

International relations

Have payments been made to recipients who are tax residents in blacklisted countries, cf. Section 5H of the Danish Taxation Act?

538

The field(s) below in this section are about the Minimum Taxation Act (Global Minimum Taxation (GloBE)) of groups with a turnover of more than 750 million euros annually in at least two out of the last four financial years.

New

Is the company part of a group that has had a turnover of more than 750 million euros annually within the last four years?

540

Is the company a group entity, etc. covered by the tax liability under the Minimum Taxation Act (Global minimum taxation (GloBE) of groups with annual turnover exceeding 750 million euros in at least two out of the last four financial years)?

540a

Controlled transactions form structure

International relations (1/2)

*“Have payments been made to recipients who are fiscally residents in blacklisted countries cf. the Tax Assessment Act (5H)?” *538*

According to the Tax Assessment Act, section 5H, payments that are covered by the provision will neither be able to be deducted as operating costs, written off nor included as acquisition sums in cases where a profit calculation must be made with effect for the calculation of the taxable income.

The provision in 5H applies to payments to recipients who are resident for tax purposes or registered according to the rules in:

- | | |
|-------------------------|-------------------------|
| 1) American Samoa | 7) Palau |
| 2) Anguilla | 8) Panama |
| 3) Antigua and Barbuda* | 9) Russia |
| 4) U.S. Virgin Islands | 10) Samoa |
| 5) Fiji | 11) Trinidad and Tobago |
| 6) Guam | 12) Vanuatu |

The provision in 5H does not apply if the taxpayer proves that the rightful recipient of the payment is resident for tax purposes in a state that is a member of the EU or the EEA, or that has entered into a DTC with Denmark.

Særlige udlandsforhold

Feltbeskrivelse	Feltinfo	Felt nr.	Udfyld felt
Har der været foretaget betalinger til modtagere, som er skattemæssigt hjemmehørende i sortlistede lande jf. Ligningslovens §5H? *		538	<input type="radio"/> Ja <input type="radio"/> Nej

*Antigua and Barbuda has been removed from the EU black list from October 2024 (however still on the Danish list, cf. Tax Assessment Act, section 5H, section 2). Draft proposal removes Antigua and Barbuda (expected effect FY2025).

Controlled transactions form structure

International relations (2/2)

International Relations / Pillar II

New sections regarding international relations have been added regarding Pillar II questions, including whether the company is part of a group that:

- Has had consolidated revenue over EUR 750 million within the last 4 years (just once).

This must be the accounting revenue, no adjustments necessary.

If yes:

- Has the consolidated revenue, calculated under the Danish Minimum Taxation Act rules, been over EUR 750 million in at least 2 out of the last 4 fiscal years (pillar 2 scoping).

The control year (e.g. FY2024) does not count, the relevant income years are 2020-2023.

The field(s) below in this section are about the Minimum Taxation Act (Global Minimum Taxation (GloBE)) of groups with a turnover of more than 750 million euros annually in at least two out of the last four financial years.

Is the company part of a group that has had a turnover of more than 750 million euros annually within the last four years?

540

Is the company a group entity, etc. covered by the tax liability under the Minimum Taxation Act (Global minimum taxation (GloBE) of groups with annual turnover exceeding 750 million euros in at least two out of the last four financial years)?

540a

Nedenstående felt/felter i dette afsnit handler om Minimumsbeskatningsloven (Global minimumsbeskatning (GloBE)) af koncerner med en omsætning på over 750 mio. euro årligt i mindst to ud af de fire sidste regnskabsår

Er selskabet en del af en koncern, der har haft en omsætning på over 750 mio. euro årligt inden for de sidste fire år? *

540

☒ Ja ☐ Nej

Er selskabet en koncernenhed mv. omfattet af skattepligten efter Minimumsbeskatningsloven (Global minimumsbeskatning (GloBE) af koncerner med omsætning på over 750 mio. euro årligt i mindst to ud af de fire sidste regnskabsår)? *

540a

☐ Ja ☐ Nej

Q&A

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