

# *Value Added Tax in Denmark*

A Guide for Non-resident Businesses

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# Preface

The management of indirect taxes such as Value Added Tax (VAT) has become increasingly important in today's highly competitive and regulated environment. While VAT has grown to be a major source of tax revenue for the Danish government, it is important that businesses react accordingly and focus on their indirect tax strategies with particular emphasis on ensuring compliance and achieving efficiencies.

With this booklet we provide a practical guide to Danish VAT for foreign businesses involved in taxable transactions in Denmark or intending to start up activities which imply a need to comply with Danish VAT legislation. Please note that the Faroe Islands and Greenland do not apply the Danish VAT legislation.

We have written this Guide to provide an overview of the most important VAT issues affecting you when doing business in Denmark. The booklet is not intended to exhaustively cover all corners of the Danish VAT jurisprudence and should not be regarded as a substitute for tax advice tailored to individual circumstances.

If you would like to discuss any of the issues addressed in more detail, please contact your usual indirect tax contact or one of the offices listed at the end of this booklet.

It is with great pleasure that we introduce this new Guide to you. For individuals and businesses exploring Denmark, we recommend this Guide as an essential read.



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# Introduction

Denmark was one of the first countries to introduce a VAT system. The first VAT Act came into force on 3 July 1967 replacing a traditional sales tax. Since then, the VAT legislation in Denmark has undergone several changes. The most important changes have been modifications to bring the legislation in line with the Sixth EC VAT Directive (which, since 1 January 2007, is officially named the Council Directive 2006/112/EC on the common system of Value Added Tax) and the so-called EU VAT Package<sup>1</sup> that entered into force on 1 January 2010.

The present Danish VAT Act (Momsloven) came into force with effect from 1 July 1994. Compared to the Directive, the Danish VAT legislation includes minor deviations and the use of various discretionary provisions.

VAT is a transaction-based multi-tier consumption tax. All supplies of goods and services by so-called “taxable persons” (entrepreneurs who independently carry out economic activity) are subject to VAT, unless specifically exempted. The VAT exemptions are restricted to a limited range of services and goods but are nonetheless subject to discussions and complications in the Danish VAT jurisprudence.

Transactions are subject to Danish VAT only when they are deemed to take place in Denmark. For the sake of tax neutrality, VAT is also levied on (a) imports (= receipt of goods from non-EU territories), (b) intra-Community acquisitions (= receipt of goods from EU member states), and (c) purchase of most types of services from abroad.

In order to avoid VAT being borne by any other than the final consumer, those who qualify as taxable persons may – with some exceptions – recover VAT charged by their suppliers according to the invoice/credit method, provided that the purchases relate to taxable transactions. VAT is recovered either via the periodical VAT return (as a deduction in VAT payable) or by filing a special application.

In general, it is the supplier’s responsibility to collect and report VAT on supplies of goods or services. However, a taxable customer/recipient is responsible for reporting VAT on the import or acquisition of goods from abroad as well as the purchase of most types of services from foreign suppliers.

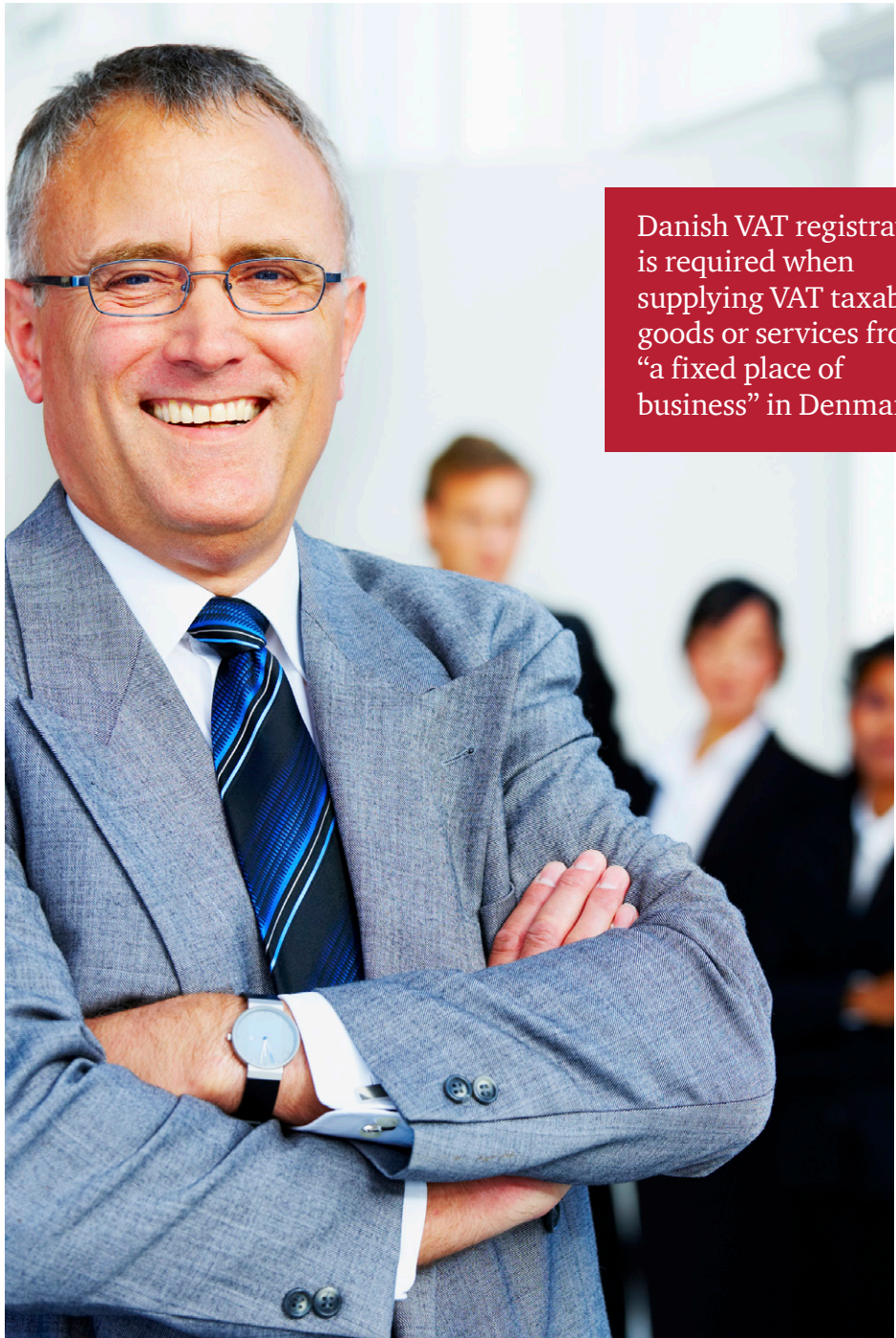
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1) Council Directive 2008/8/EC, Council Directive 2008/9/EC and Regulation EC/143/2008

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Danish VAT registration is required when supplying VAT taxable goods or services from “a fixed place of business” in Denmark

# 1. Who must register for VAT in Denmark?

## 1.1 Mandatory VAT registration

Foreign businesses must register for VAT in Denmark in the following situations:

### **a) Goods placed in Denmark or fixed establishment**

Danish VAT registration is required in 2 situations:

- Supply of goods located in Denmark and no cross border transport takes place;
- Supply of services from a fixed establishment in Denmark (eg from a registered Danish branch office or other establishment in Denmark that has the human and technical resources needed for making these supplies).

In case of a fixed establishment, the business is registered with the tax office of the district where the fixed establishment is located. Any place of business of a permanent nature (eg office, warehouse, building site existing for a period exceeding 6 months) may qualify as a fixed establishment for VAT purposes, regardless of any exemptions provided by double taxation treaties for corporate income tax purposes.

### **b) Supplies to non-taxable customers**

Danish VAT registration is required when supplying goods or services to Danish private individuals or businesses where the place of supply is deemed to be in Denmark, and the buyer is not liable to account for VAT. Please see Section 4 for details on when the place of supply is deemed to be in Denmark.

### **c) Distance sales**

Danish VAT registration is required when making distance sales of goods from other EU countries to Danish private individuals. VAT registration is mandatory when a threshold of DKK 280,000 (approx EUR 38,000) per calendar year is exceeded.

### **d) Electronic services to private customers**

Danish VAT registration is required when providing electronic services from abroad to Danish private individuals (for details, please see Sections 4.2.6 and 10.1.4).

### ***e) Purchase of goods or services***

Danish VAT registration is required when receiving from a non-Danish supplier goods or services that are subject to VAT in Denmark by the buyer. This could for example be the case with services purchased from both non-EU and EU subcontractors for the purposes of business in Denmark. There are no threshold before registration is mandatory.

### ***f) Stock of goods***

Danish VAT registration is required when holding a stock of goods in Denmark from which supplies of goods are made to either Danish or foreign customers.

## ***1.2 Optional VAT registration***

Foreign businesses may opt to register for VAT in Denmark in the following situations:

- When the value of supplies or purchases in items c) and e) above is below the mentioned thresholds;
- When immovable property situated in Denmark is leased or rented out (does not include property for residential use);
- For the supply of investment gold.

In practice, it is also possible to obtain VAT registration for the supply of goods covered by a customs suspension or freezone regime.

It is not possible to opt for Danish VAT registration in a situation where the customer has to account for VAT on the purchased services or goods.

The administrative requirements and consequences of a Danish VAT registration are described in Section 10 below.

Foreign businesses may be granted refund of VAT paid on Danish purchases without obtaining VAT registration (please see Section 8 for details).



## **2. Which VAT rate applies?**

### **2.1 Standard rate of 25%**

Denmark applies a standard VAT rate of 25% and no reduced rates.

### **2.2 Zero-rated supplies**


A special rate of 0% applies to newspapers (ie daily or periodical publications meeting specific requirements regarding their contents). Also other supplies may be subject to VAT at 0% under certain conditions that mostly relate to international trade. These are described in detail in Section 5.2 of this Guide.

Denmark applies a  
standard VAT rate of

**25%**  
and no reduced rates.

### **2.3 Special regime for foreign tourist buses**

A special VAT regime applies for foreign tourist buses transiting Denmark. The carrier is liable to pay VAT in the amount of DKK 0.25 (approximately equal to EUR 0.03) per passenger per kilometre on Danish territory.

A photograph of two women standing in a bar or restaurant. The woman on the left has blonde hair and is wearing a black cardigan over a red, white, and black patterned dress. The woman on the right has brown hair and is wearing a white button-down shirt under a tan quilted jacket. They are both smiling at the camera. In the background, there is a bar counter with various bottles and a green wall.

In principle, VAT applies to all transactions, unless they are either outside of the scope of the Danish VAT Act or specifically exempted.

## 3. Which transactions are subject to VAT?

### 3.1 Taxable supplies

In principle, VAT applies to all transactions, unless they are either outside of the scope of the Danish VAT Act or specifically exempted.

Taxable transactions fall under two main categories: “supplies” and “other”, ie situations which economically are not supplies, but are treated as such for tax neutrality reasons (also referred to as “deemed supplies”). Taxable transactions include:

- Supplies of goods by a taxable person;
- Supplies of services by a taxable person;
- Intra-Community acquisitions of goods (ie receiving goods from other EU member states);
- Imports (ie receiving goods from non-EU countries or territories);
- Purchase of services from non-Danish service providers.

The exemptions are described in detail in Section 5 of this Guide, including examples of “out-of-scope” transactions.

Transactions involving the supply of both goods and services are treated as supply of goods if a transaction represents predominantly a supply of goods; otherwise it is treated as a supply of services. Such “bundled supplies” are often subject to discussions with the authorities as the term “predominantly” may be in terms of what is the most characteristic or the most important to the recipient and not in terms of quantity or value. The qualification of an “ancillary supply” (which cannot be determinative) may also be discussed. We advise you to seek more detailed advice if “bundled supplies” are relevant to your business.

## 3.2 Supply of goods

“Supply of goods” is defined as the **transfer of economic ownership**, ie transfer of the right to dispose as the owner of a tangible asset. The transfer of economic ownership does not necessarily coincide with the transfer of legal title to the goods.

For VAT purposes, the following items are also treated as goods:

- Gas, water, electricity, heating, refrigeration (unless part of a lease of immovable property);
- Coins and bank notes when sold as collectors’ items;
- Standard software (in tangible format eg on a CD-Rom).

The transfer of goods under a **commission agreement** for the purpose of purchase or sale of these goods is treated as a supply of goods.

In respect of the transfer of goods under a **lease or credit sale contract**, two possibilities apply:

- When it is agreed that the title to the goods will pass to the lessee when the last lease payment or instalment has been made, the transfer is to be treated as a **sale of goods**, and VAT has to be paid on the total taxable value of the goods at the time they are handed over to the lessee;
- When the lessee has no obligation to buy or is given an option to purchase the goods by the end of the lease term, the transaction is treated as a **service** during the lease term (or until the title is transferred). VAT has to be paid together with the continuous payments.

### **3.3 Supply of services**

The supply of services comprises all taxable supplies which do not constitute a supply of goods. Supply of services includes activities (active or passive) as well as obligations (eg to tolerate an act or situation or to refrain from such) and rights (eg to use intangibles or explore immovable property).

**Leasing of movable property** is regarded as a taxable service (and not a supply of goods) when the title does not pass at the expiry of the lease term.

**Contract work on goods** is treated as a supply of services.

Most services provided by non-Danish suppliers to Danish businesses are subject to reverse charge VAT, meaning that no VAT is charged by the supplier and the Danish buyer has to account for Danish VAT in the invoice received.

## 4. Which supplies are subject to Danish VAT?

### 4.1 Supplies of goods

#### 4.1.1 Domestic supplies in Denmark

Goods are supplied in Denmark when they **are not transported and are therefore located in Denmark** at the time when the right to dispose is transferred to the buyer.

This usually means that the supplier has to register for VAT in Denmark and charge 25% Danish VAT on the invoice to the buyer.

Denmark has no simplification rules for **call-off stocks or consignment stocks**. This entails that a foreign business owning a stock of goods located in Denmark must register for VAT in Denmark, unless the goods are under a commissionaire agreement or subject to a customs suspension regime (eg customs warehousing or inward processing relief). Exceptions may be available where the economic ownership has already passed to the buyer at the time when the goods arrive in Denmark and are placed in the call-off stock.

Denmark has one customs free zone, **the Copenhagen Freeport**. Within the territory of that port, trade in goods and ancillary services is zero-rated for VAT purposes. However, VAT and other applicable taxes and duties must be paid when goods are removed from the Freeport for sale or consumption in Denmark (please also see Section 4.1.3 on import VAT below), and certain formalities apply if goods are removed from the Freeport for onwards supply out of Denmark.

Goods may also be stored in the area of the Freeport without being subject to the customs free zone regime. In that case normal VAT rules apply; however, the warehouse keeper is responsible for separate storage of goods with different customs status (both physically and in the ledgers).

#### 4.1.2 Supply of goods between Denmark and other EU countries *Intra-Community supply to other EU countries*

The supply of goods is zero-rated for VAT purposes when goods are physically transported from Denmark to another EU country, and the recipient is registered for VAT purposes in another EU country. The value of such supplies must be reported in the Danish VAT return and a foreign business making such supplies has to register for VAT in Denmark.



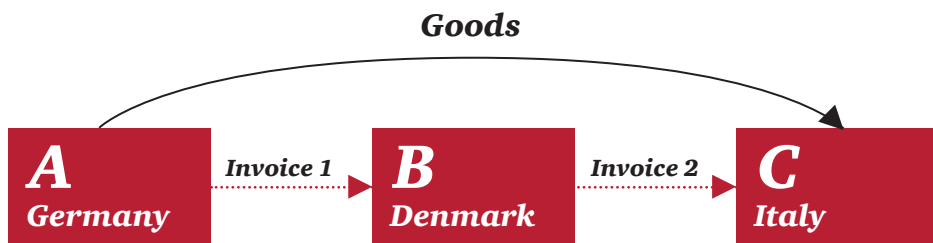
To be able to issue an invoice without VAT, the supplier must be able to document the buyer's identity (including valid VAT number), and that the goods are actually transported from Denmark to another EU country. If the supplier cannot document that the goods are actually transported to another EU country or that the buyer is a taxable person, Danish VAT is payable.

The transport may be documented by a bill of lading, transport invoice, statement from the buyer, etc. If the documentation is received afterwards, a credit note and a new invoice may be issued without Danish VAT.

VAT numbers may be verified via the website of the Danish tax authorities [www.skat.dk](http://www.skat.dk) or the VAT Information Exchange System (VIES) supported by the EU Commission. VIES may be accessed by the following link: [www.ec.europa](http://www.ec.europa).

### ***Triangular transactions***

The triangulation transaction is a simplification measure applied in cases where three businesses domiciled within or outside the EU are registered for VAT purposes in three different EU member states, and the goods are forwarded directly from the first supplier to the final customer:



According to the general VAT rules, the intermediary B has to register for VAT either in the country of dispatch (Germany) or in the country of destination (Italy), and must account for VAT in the country of registration.

In accordance with the simplification measure, the Danish intermediary B may not be registered for VAT in Germany or Italy. B must, however, report the supply to C in the VAT Information Exchange System (VIES) in Denmark (please see Section 10.4 below for details), applying a specific code for triangular supplies. The invoice issued by B is exclusive of VAT. C accounts for acquisition VAT in Italy in accordance with local rules.

The simplification rule cannot be used when the above preconditions do not apply (eg more than three links are involved in the supply chain, or one of the parties is registered for VAT in any of the two other countries involved).

### ***Intra-Community acquisition from other EU countries***

The acquisition of goods in Denmark from other EU countries is subject to Danish acquisition VAT at the rate of 25% of the price or value of the goods.

Goods subject to a special customs regime or supplied from a customs freezone (eg a Freeport) may be subject to import VAT instead of acquisition VAT, even though they physically arrive from another EU country. This depends on the trade agreement, the delivery terms and the customs status of the goods.

The acquisition VAT is fully deductible in the same VAT return if the goods are used for taxable activities.

In order to avoid local VAT being collected by the supplier, the Danish recipient must provide the foreign supplier with its Danish VAT number.

### ***Transfer of own goods between EU countries***

As a main rule, the transfer of own goods from another EU country to Denmark for the business's own commercial activities in Denmark is subject to Danish acquisition VAT and has to be reported in the Danish VAT return. In the country of departure, such goods are regarded as zero-rated intra-Community supply.

Correspondingly, if a business sends own goods from Denmark to another EU country for the purposes of its business (eg a branch office), the transfer has to be reported in the Danish VAT return as a zero-rated intra-Community supply.

As a main rule, this means that the business must be registered for VAT both in the country of departure and arrival.

There are, however, some exceptions where the transfer of own goods does not need to be reported in the VAT return (and where the VAT registration is not needed). This may be the case with eg goods sent to another EU country for temporary use if the goods are returned to the country of departure afterwards.

### ***Installation and assembly of goods***

According to the Danish VAT Act, a foreign supplier who installs and/or assembles goods in Denmark has to register for VAT and issue an invoice with 25% Danish VAT if the supply is to a non-taxable person.

If the recipient is registered for VAT in Denmark, the foreign supplier cannot register for VAT in Denmark. In such case, the supplier issues an invoice with no VAT, and the recipient accounts for the Danish acquisition VAT in the VAT return.

### ***Distance sales***

A business which supplies goods to private individuals in Denmark from another EU country, where the goods are transported to the buyer by the seller or on the seller's behalf, has to register for VAT in Denmark and charge Danish VAT in the invoice when the value of such supplies exceeds the threshold of DKK 280,000 (approx EUR 38,000) in the previous or current calendar year.

If this threshold is not exceeded, the supply is subject to VAT according to the rules of the supplier's country. The supplier may, however, opt for VAT registration in Denmark before the threshold is exceeded and charge Danish VAT on the sales to Danish customers.

Special rules apply to goods subject to excise duties.

### ***4.1.3 Supply of goods between Denmark and non-EU countries***

#### ***Export of goods to non-EU countries***

Goods to recipients outside the EU (including the Faroe Islands and Greenland) are zero-rated for VAT purposes when physically transported from Denmark to a non-EU country either directly or via other member states. The exporter must be registered for VAT and customs purposes in Denmark.

Goods transported out of the EU must be customs cleared for export either by the Danish customs authorities or by a customs office at the EU external border. The customs declaration is filed electronically.

To apply the 0% VAT, the exporter must be able to prove the export (eg by electronic verification of the customs clearance or by freight documents showing that the goods have actually left the EU).

The value of exported goods must be reported in the VAT return for the period when the goods are exported.

#### ***Import of goods from non-EU countries***

Import means the physical entry of goods into Denmark from a non-EU country or territory, including the Faroe Islands and Greenland.

The recipient of the goods must account for (and pay) import VAT. VAT is based on the customs value of the goods, added costs of transportation and insurance to the first destination in Denmark and customs duty, if any. Specific excise duties (if any) are also to be added although there are various exemptions.

Goods subject to excise duty may usually only be imported by traders who are registered for the given excise duty. For more information on excise duties and when such duties should be included in the VAT base, please contact our Indirect Tax Specialists.

A vast majority of Danish VAT registered businesses report the import VAT as VAT payable in the VAT return. Import VAT is fully deductible in the same VAT return if the business uses the goods for taxable activities. This provides a cash flow advantage as no payment of import VAT has to be made in practice, but only a +/- transaction in the VAT return.

Contrary to import VAT, customs duty is a cost for the importer. Registered importers usually pay customs duties on a monthly basis.

If, upon the import, goods are subject to a special customs suspension regime, import VAT is suspended as long as the customs regime is applicable. This implies that the person bringing the goods into free circulation for customs purposes must account for or pay the import VAT.

If goods are temporarily exported to a place outside the EU for eg repair or processing, and re-imported to Denmark, import VAT is payable only on the costs of the services on and transportation of the goods. Please note that specific customs requirements must be met in that case.

## **4.2 Supply of services**

### **4.2.1 General rule**

#### ***Services provided to taxable customers***

As a general rule, the place of supply is where the taxable customer is established. This means that services supplied to a business having its business address or a fixed establishment in Denmark to which the services are supplied are subject to Danish VAT regardless of where the supplier is established.

It has to be determined on a case-by-case basis whether a person has a fixed establishment in Denmark or not (eg existence of Danish office facilities and/or employees, representative for concluding contracts).

In most cases, a foreign supplier providing services to taxable Danish customers does not have to register for VAT in Denmark. It is the Danish customer who is responsible for the correct reporting and payment of the Danish VAT on the service received (the so-called reverse charge system).

**Reverse charge** means that the supplier may issue an invoice without VAT as the buyer is obliged to calculate and report VAT in his own VAT return and pay the VAT amount to the local tax authorities to the extent that the buyer is not entitled to

recover input VAT. Consequently, the supplier cannot register for VAT in the buyer's country for such supplies.

The VAT calculated by the buyer under the reverse charge system is fully deductible in the same VAT return if the services are used strictly for taxable activities. In that case, the buyer's cash flow will not be affected as it is simply a +/- transaction in the same VAT return.

### ***Services provided to non-taxable customers***

If the customer is a non-taxable person (eg a private person or a state institution with no economic activities), the service is subject to VAT in Denmark if the supplier has established its place of business in Denmark or has a fixed establishment in Denmark from which the service is supplied.

Exceptions to the general rule are described below<sup>2</sup>.

#### ***4.2.2 Services related to immovable property***

All services directly related to immovable property or fixed installations located in Denmark are in principle subject to Danish VAT even if services are provided through a fixed establishment in another country. No simplifications apply. Examples of services in this category are engineering, construction or other physical work, and services by architects, decorators and real estate agents.

If such services are provided by a foreign supplier to a Danish taxable buyer or a foreign taxable buyer, the latter is liable to account for Danish VAT under the reverse charge rules. Please note that the concept "Danish taxable buyer" may also include foreign enterprises if, for example, the purchase is used for the enterprise's business in Denmark.

A foreign supplier should only register and charge Danish VAT if it has a FE in Denmark.

We would like to underline that the Danish VAT rules on immovable property are highly complex and require careful consideration and planning on a case-by-case basis.

#### ***4.2.3 (Admission to) cultural, artistic, sporting, entertainment, scientific or training services or events***

Admission to cultural, artistic, sporting, scientific, educational, entertainment and similar events, including fairs and exhibitions, and services related thereto, has place of supply in Denmark if the event takes place in Denmark. Examples of services in this category are concerts, song or dance shows, sports events, exhibitions, trade shows, seminars and conferences.

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2) The exceptions cover the situations that most often occur in practice, but do not constitute an exhaustive list.

“Admission” includes the supply of services where the essential characteristics are the granting of the right to entry to an event in exchange for a ticket or payment (also when the entry is covered by a subscription, season ticket or a periodic fee). Businesses providing such services are required to register for VAT in Denmark and charge 25% Danish VAT on these supplies.

The place of supply for other services related to culture, entertainment, etc, including the services of organisers of such events, is in the country of the recipient if this is a taxable person, and the recipient accounts for the VAT under the reverse charge procedure.

A number of cultural and educational services are, however, exempt from VAT (eg school and university education, libraries and museums).

#### **4.2.4 *Repair and valuation of movable assets and services ancillary to transport***

Any work on tangible assets, including repair and maintenance, as well as services ancillary to transport (loading, unloading, etc) provided to Danish taxable customers is subject to VAT in Denmark under the reverse charge procedure.

#### **4.2.5 *Transport***

##### ***Transport services provided to taxable customers***

As a main rule, transport services as well as services ancillary to transport provided to Danish taxable customers are subject to VAT in Denmark under the reverse charge procedure

Transport of goods to and from non-EU countries is zero-rated for VAT purposes in accordance with the EU rules. Transport related to import of goods from non-EU countries will, however, have to be included in the import VAT base by the importer of record.

##### ***Transport services provided to non-taxable customers***

Transport of goods provided to a non-taxable customer is subject to VAT in Denmark if the transport takes place in Denmark. In case the transport takes place also in other countries, the part of the transport that takes place in Denmark is subject to Danish VAT in proportion to the distances covered.

As an exception to this rule, a transport of goods within the EU is subject to VAT in Denmark if the transport starts in Denmark.

Transport of goods to and from non-EU countries is zero-rated for VAT purposes in accordance with the EU rules. Transport related to import of goods from non-EU countries will, however, have to be included in the import VAT base by the importer of record.



Foreign suppliers providing these services to non-taxable customers will have to register for VAT in Denmark in order to be able to account for Danish VAT. In principle, this applies also in case of zero-rated transport to and from non-EU countries where foreign suppliers may have to register for VAT in order to obtain a refund of VAT paid in Denmark on related expenses.

### ***Passenger transport***

Passenger transport services are subject to Danish VAT legislation if the transport takes place in Denmark. If only part of the transport takes place in Denmark, this part of the transport is subject to Danish VAT in proportion to the distances covered.

However, only passenger transport in **tourist buses and similar unscheduled vehicles** is taxable in Denmark. Taxis, scheduled bus routes, trains and air transport are exempt from VAT with no credit for input VAT (although specific input VAT refund schemes are available for cross-border passenger transport).

### ***4.2.6 Intellectual property rights, consulting, supply of staff, advertising, IT, telecom, etc***

Certain services listed in Article 59 of the EU VAT Directive<sup>3</sup> are subject to the so-called use and enjoyment rule. Services in this category include:

- Transfer and assignment of copyright, patent rights, licences, trademarks and similar intellectual property rights;
- Assumption of obligation to refrain from carrying out a business activity or using a right (eg the above);
- Advertising and marketing services;
- Consultants, engineers, projection offices, lawyers, accountants and similar professions;
- Obligations to refrain from pursuing or exercising a business activity or a right referred to in this paragraph;
- Data processing, other IT services and the supply of information;
- Banking (renting of safes not included), financing and assurance;
- Supply of staff;

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3) The Council Directive 2006/112/EC with subsequent changes.

- Lease/rent of movable property except for means of transportation;
- Telecommunication;
- Radio and television broadcasting;
- Electronically supplied services (including hosting of websites, remote maintenance of soft- and hardware, supply and updating of software, supply of pictures, texts and information and making available databases, supply of digital music, film, games (including gambling or games for money), features and any type of political, cultural, artistic, sport or scientific event, entertainment, distance learning and training);
- Access to, transport or transmission through distribution systems for natural gas or electricity and directly related services.

These services are subject to VAT in Denmark in accordance with the general rule as described in Section 4.2.1 above, ie if provided to a taxable person established in Denmark (reverse charge applies) or if provided through a fixed establishment in Denmark (if the customer is a non-taxable person).

These services are, however, not subject to VAT in Denmark if actually used or enjoyed outside the EU by the recipient.

Likewise, these services are subject to VAT in Denmark in the following cases:

- If provided by a taxable person established in Denmark to a taxable customer established outside the EU if the service is actually used or enjoyed in Denmark;
- If provided by a taxable person established in Denmark to a non-taxable person established or residing outside the EU, if the service is actually used or enjoyed in Denmark; and
- If provided by a non-EU service provider to a Danish non-taxable person if the service is actually used or enjoyed in Denmark.

If the services are provided by a non-EU business to a non-taxable person in Denmark, the supplier is obliged to register for VAT in Denmark and collect Danish VAT from the customer.

A practical issue is that the use and enjoyment rules are not the same in all EU countries. To avoid double taxation or non-taxation, supplementary provisions give the member states the right to remedy. Still, there may be problematic situations.

Passenger transport services are subject to Danish VAT legislation if the transport takes place in Denmark. If only a part of the transport takes place in Denmark, this part of the transport is subject to Danish VAT in proportion with the distances covered.



## 5. Which transactions are exempt from VAT?

As already mentioned above, certain transactions are exempt from VAT in Denmark although they fall under the Danish VAT rules.

Reading the Danish VAT Act and official guidelines may lead to some confusion as “exempt transactions” are dealt with in two sections. It is therefore important to note the differences described below.

### 5.1 Exemptions with no right to deduct input VAT (Section 13 of the Danish VAT Act)

The following activities are exempt from VAT, and suppliers have no right to recover related input VAT<sup>4</sup>:

- Hospital treatment, medical practice and dentistry;
- Charity, “welfare” and social security work and the supply of closely related goods and services;
- Education in schools, colleges and third level education. Exemption does not include activities aimed at businesses and carried out for the purpose of making profit (conferences, courses and seminars);
- Supplies by non-profit associations and organisations to their members in return for membership fees (it is a condition that the VAT exemption does not distort competition);
- Services provided for non-profit purposes in connection with amateur sports;
- Cultural activities such as museums, libraries and zoological gardens. However, radio and TV transmissions, concerts, theatre and cinema performances, etc are subject to VAT;
- Literary, composition and other artistic activities;

4) The examples of exempt supplies in Section 5.1 are not exhaustive and merely represent the zero-rated supplies that are most often relevant to foreign enterprises in our experience.

- Renting and leasing of immovable property, including supplies of gas, water, electricity and heat as part of the rent or lease (an option for taxation is available, please see Section 9.2). The letting of rooms in hotels and in other establishments for a period of less than one month, as well as the letting out of parking and advertisement spaces, etc, are, however, taxable;
- Supply of immovable property. Supply of a new building or a new building together with land related thereto, as well as supply of a building site, developed or not, and separate supply of a built-up land plot are, however, subject to VAT (see also Section 9 below),
- Insurance and reinsurance services;
- Most financial activities, including deposits of money, loans and provision of loans (a specific VAT refund scheme is available for input VAT incurred in connection with provision of these services to non-EU customers);
- Transactions in relation to foreign exchange and securities;
- Distribution of specific letters and packages by the Danish postal service (Post Danmark A/S);
- Passenger transport (a specific VAT refund scheme is available for input VAT incurred in connection with cross-border passenger transport).

In most cases, businesses which carry out the above-mentioned VAT exempt activities must pay a specific **Danish payroll tax** (*lønsumsafgift*) instead. Payroll tax is calculated on the company's payroll, including any form of wages which the company's employees have received. The tax rate varies between 3.54 and 14,1% of the payroll etc, depending on the type of the exempt activities.

## **5.2 Exemptions with right to deduct input VAT (Section 34 of the Danish VAT Act)**

The following supplies are subject to VAT at 0%, whereby no VAT is charged, but the supplier may recover input VAT on related costs.<sup>5</sup>

### **5.2.1 Export of goods to non-EU countries**

Goods which are physically delivered from Denmark to a destination outside the EU are zero-rated for VAT purposes. The exemption also applies to:

- **Services directly related to export** (eg transport, agency services arranging the export or ancillary services);
- **Processing services** performed in Denmark on goods that are afterwards exported to a non-EU country by the exporter or the recipient established outside Denmark.

The supplier must be able to document that the goods have actually left the EU for the tax authorities to be sure that the conditions for the zero-rating are met. The confirmed electronic customs declaration is the best documentation that goods have physically left the EU. Freight or other commercial documents may also be used.

### **5.2.2 Supply of goods to other EU countries**

Goods which are physically delivered from Denmark to a destination in another EU member state are zero-rated for VAT purposes when the acquirer is registered for VAT purposes in another EU member state. The exemption also applies to:

- Transfer of goods for a business's own use in the other EU member state (ie the business may need a VAT registration in this other member state);
- Transfer of goods subject to excise duty when the business is required to be registered for VAT and excise duty in this other member state;
- Supply of goods under the triangulation rules (please see Section 4.1.2 above).

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5) The examples of zero-rated supplies in Section 5.2 are not exhaustive and merely represent the zero-rated supplies that most often are relevant to foreign enterprises in our experience.



Goods which are physically delivered from Denmark to a destination in another EU member state are zero-rated for VAT purposes when the acquirer is registered for VAT purposes in another EU member state.



The supplier must be able to document that the goods have been sent to a VAT registered person in another EU country by means of the commercial documents (eg invoice and freight documents) indicating the valid VAT number of the acquirer.

### **5.2.3 *Supplies in connection with ships***

The following supplies are zero-rated for VAT purposes:

- Sale, reconstruction, repair, maintenance, chartering and leasing of ships with gross tonnage of 5 tons or gross registered tonnage of 5 tons or more and their permanent equipment. This includes all spare parts, materials or equipment necessary for the functions of the ship or its navigation.
- Fuel for above-mentioned ships with gross tonnage of at least 5 tons,
- Necessary equipment supplied for use on board ships navigating in international waters, as well as fuel and services provided for such ships and their loading.
- Supplies and provisions for ships for consumption on board or sale to passengers, etc in accordance with the customs rules.

The exemptions do not apply to pleasure boats or to services carried out on board by the crew.

### **5.2.4 *Supplies in connection with aircraft***

The following supplies are zero-rated for VAT purposes:

- Sale, reconstruction, repair, maintenance, chartering and leasing of aircraft that are used by airline companies operating for reward mainly on international routes, as well as supply, leasing, repair and maintenance of such aircraft's permanent equipment and necessary equipment supplied for use on board such aircraft.
- Services provided for such aircraft and their loading.
- Fuel and supplies, including provisions, to such aircraft.
- Sale, reconstruction, repair, maintenance, chartering and leasing of aircraft that are used by state institutions as well as objects built in or exploited upon the use of such aircraft.

### 5.3 *Supplies outside the scope of VAT*

Some supplies are not subject to VAT because they are not in the scope of the Danish VAT Act.

Out-of-scope transactions include mainly activities that are for some reason not regarded as economic activities. This includes eg receipt of dividend income, purchase and sale of shares, shareholding activities and transfer of going concern (if the new owner operates a business liable to VAT).

This may be relevant for example with respect to calculating the recovery rate for input VAT on costs that relate to both taxable business as well as supplies that are exempt from VAT or not in the scope of VAT at all. The general principle is that only the part of the input VAT that relates to the use in the taxable business may be recovered. However, the calculation methods are different depending on whether the non-taxable use relates to transactions that are exempt from VAT, or transactions that are outside the scope of VAT.

Some supplies are not subject to VAT because they are not in the scope of the Danish VAT Act.

Out of scope transactions include mainly activities that for some reason are not regarded as economic activities.

## 6. What is the taxable amount?

### 6.1 General rule

VAT is levied on the total consideration for the goods or services. Where consideration is not in cash, VAT is charged on the open market value.

**Expenses** constituting part of the consideration (ie which the buyer is obliged to pay to the seller) must be included in the VAT base. This includes fees for public certificates, delivery costs, handling or administrative fees, mileage allowances or per diem allowances for the seller's staff and payments or commissions to the seller's sub-contractors or agents, etc.

In case of a **self-supply**, other deemed supplies of goods or services or intra-Community supplies with no sale (eg transfer of own goods from Denmark to another EU country), the VAT is calculated based on the cost price, including any ancillary costs.

The VAT base of imported goods is the **customs value** (determined in accordance with the international Customs Valuation Code) plus

- Ancillary costs not already included (eg transport, insurance and packing costs). Please note that the customs value must include costs until the EU external border, whereas the VAT base must include expenses until the first destination in Denmark;
- Customs duty payable, if any;
- Excise duty payable, if any (in many situations, importers are obliged to register for excise duty purposes and pay the duty on a periodical basis instead of at the time of importation).

Special rules for calculating the VAT base apply for travel agents, used goods, objects of art, collector items and antiquities.

## 6.2 *Expenses not included in the taxable amount*

The VAT base of goods and services does not include reimbursement for expenses made by the supplier in the name and on behalf of somebody else. To recharge such expenses without VAT, the following conditions must be satisfied:

- The name of the business for which the expense is paid must be stated in the original purchase invoice;
- The parties have agreed that the expense is paid by the supplier and should be recharged in addition to the agreed price of the supply itself;
- Expenses are booked in a separate balance sheet account (and not in an income statement account);
- The recharged expense must correspond to the actual expense, ie no profit margin is added, and any discount obtained by the payer must be passed on;
- Original vouchers must be handed over to the final payer.

If the above conditions are not met, such expenses are subject to VAT when recharged. This may lead to double taxation. However, when the purchase invoice is issued to the supplier, the supplier may recover the VAT amount specified in the invoice, and the final payer may recover VAT levied at the recharge.

Special rules for calculating the VAT base apply for travel agents, used goods, objects of art, collector items and antiquities.

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## 7. *Which input VAT is refundable?*

“Deduction” when used in the Danish VAT Act and official guidelines means the situation where a VAT registered business may offset input VAT in the VAT return against collected VAT in order to reach a net amount payable to the tax authorities.

The same principles of the right to deduct VAT apply to foreign businesses not registered for VAT purposes in Denmark. In such situations, VAT is recovered by means of a specific refund application filed with the tax authorities. Refund is granted in accordance with EU provisions (included in the EU VAT refund directive<sup>6</sup> for EU domiciled businesses, and in the 13th EU VAT Directive<sup>7</sup> for non-EU domiciled business). The VAT refund is normally granted to the same extent as a Danish business would be entitled to deduct input VAT in its VAT return.

### **7.1    *General right to deduct VAT***

Taxable persons are entitled to deduct VAT on costs that are incurred in connection with taxable activities. This includes:

- VAT on goods and services purchased from other taxable persons;
- Import VAT on goods from non-EU territories;
- Acquisition VAT on goods from other EU countries;
- Reverse charge VAT on services purchased from abroad.

The above is collectively referred to as “input VAT”.

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6) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State

7) Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the member states relating to turnover taxes (arrangements for the refund of value added tax to taxable persons not established in Community territory)



The conditions for deducting input VAT are as follows:

- The buyer, alternatively the recipient of imported goods or goods acquired from the EU, qualifies as a taxable person for VAT purposes;
- The purchase is related to the taxable activities of the buyer/recipient;
- The invoice (if required) meets the formal requirements (please see Section 10.2.1 below);
- VAT has been correctly invoiced by the supplier (ie there is no VAT refund for VAT that has been invoiced by mistake, eg on a supply that should have been subject to reverse charge by the customer).

If purchased goods or services are only partially used for taxable activities, input VAT may be deducted on a pro rata basis, depending on the proportion of taxable and VAT exempt transactions of the business.

Special restrictions on input VAT recovery may apply to certain purchases even if the purchase exclusively relates to taxable activities. This is the case with eg purchases in connection with motor vehicles (passenger cars, vans, trucks). For details, please see Section 7.4 below.

## **7.2 Partial VAT deduction**

A business with both taxable and VAT exempt activities must allocate costs in order to obtain:

- Full VAT deduction on purchases exclusively related to taxable activities;
- No VAT deduction on purchases which are used exclusively for VAT exempt activities.

Costs which do not specifically relate to either taxable or VAT exempt activities are subject to partial VAT deduction. This includes costs of management, administration, furniture and office equipment, computer equipment, telecommunication, canteen or lunch room for all employees, premises used for all activities, cleaning, audit and general legal support, etc.

The partial VAT deduction is based on the ratio between the taxable revenue and total revenue of the business (excluding income from activities that are outside the scope of VAT as described above in Section 5.3) and is fixed as a percentage.

For practical purposes, it is possible to use a preliminary ratio based on the actual VAT recovery percentage in the previous year or an estimate. In such case, an adjustment must be made after year end to bring the deducted input VAT in accordance with the actual ratio for the year.

### **7.3 *Costs related to non-business use or activities outside the scope of VAT***

Where a cost or expense relates to non-business use or activities outside the scope of VAT (eg private use, costs for the benefit of staff or management, activities in connection with shareholding function), it is not possible to deduct VAT in full or according to the ratio of taxable activities as described above.

If a cost relates to both taxable activities and non-business/out of scope activities, VAT may be deducted based on the best estimate of the taxable use. This should be done on a case-by-case basis, and the company must be able to justify/document the estimate if challenged by the tax authorities.

### **7.4 *Non-deductible input VAT***

A number of costs are barred from deduction or refund of input VAT even when it can be argued that they relate to taxable activities. Such costs are:

#### ***a) Passenger cars***

VAT on costs related to the purchase, short-term renting/leasing and operation of cars designed to carry up to 9 persons cannot be deducted. For long-term leasing (more than 6 months during which the car is used in connection with taxable activities for more than 10% of the time) of passenger cars, a limited amount of VAT calculated based on the car registration tax may be deducted (the deductible amount is stated in the invoice by the lessor).

Special rules apply to car dealers, car rental companies and driving schools – these enterprises are entitled to full VAT deduction on the above-mentioned costs.

#### ***b) Commercial and cargo vehicles with a total weight of up to 3 tons<sup>8</sup>***

VAT on costs related to purchase may only be deducted if the vehicle is exclusively used for taxable activities. There are detailed rules as to what is regarded as “business use” and “private use” in this regard. VAT on costs related to operation may usually be fully deducted, irrespective of whether the vehicle is only partially used

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8) In practice, the same rules are applied for commercial and cargo vehicles that weigh up to 4 tons.



VAT on costs related to purchase, short-term rent/lease and operation of cars designed to carry up to 9 persons cannot be deducted.

for taxable activities or not. For leased vehicles that are not exclusively used for the purposes of taxable activities, 1/3 of VAT on the lease may be deducted.

Special rules apply to car dealers, car rental companies and driving schools – these enterprises are entitled to full VAT deduction on the above-mentioned costs.

### ***c) Supplies to employees***

VAT on purchases made for the benefit of the employees or the owners of a business (eg meals, accommodation, remuneration in kind and other fringe benefits, summer cottages and childcare facilities) cannot be deducted.

### ***d) Entertainment, hotel accommodation, restaurant services and gifts***

A special rule applies whereby ¼ of the VAT amount paid for restaurant services deductible, provided that the costs relate strictly to business purposes.

Organisers of courses and seminars primarily directed at business customers may deduct ¼ of the VAT on purchases etc related to the meals for the course participants, and 100% of the VAT on purchases etc related to the hotel accommodation of the course participants, to the extent that the purchases are at a reasonable level for the course in question (ie no luxury).

VAT on costs of entertainment and gifts are not deductible.

## **7.5    *Bad debts***

Businesses may reduce VAT paid to the tax authorities in case of bad debts. The relevant VAT amount may be deducted from output VAT payable in the tax period when the loss is recognised according to the specific rules. If any part of the loss is subsequently collected, VAT will be payable (calculated as 25% of 80% of the collected amount) and must be included in output VAT for the tax period when collected.

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9) In practice, the same rules are applied for commercial and cargo vehicles that weigh up to 4 tons.

## 7.6 Adjustment of input VAT on capital goods

When a VAT registered business deducts VAT upon purchase/acquisition of capital goods, the business undertakes to use the items in the future for taxable purposes at least to the same extent as at the time of deduction. If, at some later stage, the business utilises the capital goods for a different purpose, or the ratio between taxable and exempt supplies changes (compared to the year of purchase, acquisition or first use, respectively), the deducted input VAT must be adjusted. No adjustment is required when a change results in less than 10% change.

When a VAT registered business deducts VAT upon purchase/acquisition of other goods or services, the deduction will in practice be decided based on the intentions of use at the time of deduction. However, if circumstances change so that the actual use of the goods or services is different from the intentions, the deduction must be adjusted to reflect the actual use.

Capital goods are:

- **Machinery, tools and equipment** with a purchase price of at least DKK 100,000 (approx EUR 13,500) per unit excluding VAT;

Services that have the same characteristics similar to those normally attributed to capital goods, including software and intellectual rights, if the purchase or production cost exceeds DKK 100,000 (approx EUR 13,500) excluding VAT;

- **Immovable property**, including extensions and reconstruction works;
- **The maintenance and repair of immovable property** with a value of at least DKK 100,000 (approx EUR 13,500) per property per year excluding VAT.

Adjustments are necessary in the following situations:

- A change in the use of capital goods resulting in the right to a lower VAT deduction than at the time of purchase (eg more VAT exempt or private or “non-business” activities);
- A change in the use of capital goods resulting in a higher VAT deduction than at the time of purchase (eg more taxable activities);
- Use of capital goods solely for private purposes;
- The sale or transfer of capital goods in connection with the transfer of going concern (under certain circumstances, the buyer may take over the remaining adjustment obligation).

If capital goods (except for immovable property) are sold and the business has not been entitled to 100% VAT deduction when purchasing such goods, the sale will be attributed the same status as if the goods were used for fully VAT deductible purposes for the remainder of the adjustment period. The business will therefore be entitled to a 100% input VAT deduction for the remainder of the adjustment period. However, the adjustment amount cannot exceed 25% of sales amount (exclusive of VAT).

The adjustment period for machinery, furniture and other operating equipment as well as for the maintenance and repair of immovable property is 5 years, including the year of purchase. The adjustment period for immovable property including extensions, reconstructions and improvements is 10 years.

In practice, the deducted VAT amount should be seen as 5 or 10 small portions of VAT respectively, each relating to one year. The need for an adjustment is evaluated year by year and, if applicable, the adjustment is calculated on this annual basis (ie 1/5 or 1/10, respectively, of the VAT paid at the time of purchase).

## **8. *How can a non-Danish business apply for a VAT refund?***

Non-resident businesses that maintain a fixed establishment in Denmark or carry on taxable activities in Denmark may have to be registered for VAT purposes in Denmark. In such case, they may deduct input VAT on their Danish purchases from the VAT payable in their Danish VAT return with no further formalities.

Businesses without a Danish VAT registration may apply for a refund of input VAT incurred in Denmark. Typical examples of such costs are participation in a trade fair, exhibition or conference, or marketing or similar events.

There are the following minimum limits for VAT refund claims:

- DKK 400 (approx EUR 50) per calendar year,
- DKK 3,000 (approx EUR 400) per period of at least 3 months within one calendar year (or less, if the application concerns the remainder of a calendar year).

The refund claim must be received by the tax authorities by 30 September of the following calendar year.

***DKK***

**400**

Minimum limit for VAT refund claims



## **8.1 VAT refund to businesses from other EU countries**

Businesses from other EU countries should lodge an electronic refund application via the website of the tax authorities of their home country in order to apply for a VAT refund in Denmark. Applications should be in Danish, English, Swedish or German; the use of other languages is decided by the tax authorities on a case-by-case basis.

The payment should be made within approximately 4 months of the Danish tax authorities receiving the claim, unless additional information or documents are requested.

## **8.2 VAT refund to businesses from non-EU countries**

The refund application must be sent to the Danish tax authorities at the following address:

### **SKAT Tønder**

Udland - Momsrefusion & Momsregistrering  
Pionér Alle 1  
DK-6270 Tønder

The application must state the reason for the reclaimed expenses, the VAT amount in DKK, and that – during the period covered by the application – the business has not carried out activities for which it should have been registered for VAT in Denmark. The original invoices and import customs declarations, if any, must be submitted along with the application. The documents will be returned with an endorsement approximately after one month.

Further, a declaration from the tax authorities of the home country stating that the business carries out business activities must be enclosed.

Payment should be made within 8 months of the tax authorities receiving the claim if the claim is submitted in due time and includes sufficient supporting documentation.

The application forms are available on the Danish tax authorities' website, [\*www.skat.dk\*](http://www.skat.dk).

# 9. *Specific rules on immovable property*

## 9.1 *Supply of land and buildings*

### 9.1.1 *VAT exempt supply of land and buildings*

The general rule is that the supply of land and buildings is exempt from VAT, and as a rule the supplier will not be able to deduct any input VAT related to the sale. A building is not only regarded as the building and the site, but also the trees and other growths, fences, constructions and fixed accessories when these are fixed to the ground or the building.

It is possible to opt for VAT registration for the purchase, construction and development of VAT exempt immovable property with the intention of selling it to a VAT registered taxable person. In such case, the seller will be able to deduct input VAT on costs related to the development etc, whereas the buyer will take over any VAT adjustment obligation on the purchased property. The input VAT is refunded to the seller on the condition that the buyer will confirm in writing that the property will be used for taxable purposes.

### 9.1.2 *Taxable supply of “new” buildings and building land*

The supply of building land and new buildings is subject to 25% VAT as of 1 January 2011, whereas ordinary rules on the deduction of input VAT apply to related costs.

The following items are regarded as “new” buildings for VAT purposes:

- Newly erected buildings (ie supply takes place before the first occupation, or the first supply after occupation takes place within 5 years from when the building was finished).
- Buildings that have been significantly extended or reconstructed (ie if the value of the extension or reconstruction works, VAT excluded, exceeds 50% of the value of the property before the extension or reconstruction plus the value of the extension or reconstruction works upon the first supply of the building, or 25% of the value of the works in case the building is supplied together with land).

“Building land” is regarded as an undeveloped site planned for a purpose that enables erecting buildings on it.

## **9.2    *Renting of immovable property***

A person intending to rent out immovable property or parts thereof to a business customer may opt for voluntary VAT registration and charge VAT on the rent. If the landlord does not have such voluntary VAT registration, the rent is exempt from VAT implying that input VAT on related costs cannot be recovered. The voluntary VAT registration covers a period of at least 2 calendar years.

The voluntary VAT registration cannot be obtained for renting out property for residential purposes.

## **9.3    *Special rules for construction activities***

In Denmark, special self-supply rules apply to building activities (ie construction of buildings on own land). The historical purpose of these rules is to avoid the distortion of competition in the building sector as the sale of immovable property is VAT exempt (except for the sale of new buildings and building land as of 1 January 2011), whereas construction work for others is taxable.

The self-supply rules apply when:

- A taxable person using own staff and resources constructs a building with the intention to sell or rent out the building;
- A taxable person constructs a building using own staff and resources, and the building is to be used for the taxable person's own activities.

This entails that the taxable person should pay VAT on the work performed by itself and its employees and on the materials used for this work.

This self-supply VAT may only be deducted if the building is to be used for fully taxable activities, eg the taxable person's own (taxable) business, or if the taxable person has opted for a voluntary VAT registration for renting out the whole building. Otherwise, the self-supply VAT cannot be deducted.

In order to determine whether construction work is subject to VAT under the self-supply rules (ie work for the taxable person's own account) or the "normal" VAT rules for construction work (ie work for the account of others), it is necessary to look at:

- who owns the site (when the site is sold), or
- whether there is a binding contract for the sale of the building at the time when the work starts (in practice, when the foundation is laid).

If the work has been started before a binding contract for the sale of the site (or building) has been signed, the rules regarding the construction work for one's own account will apply, and self-supply VAT on the construction activities will have to be accounted for.

If the work has been started after the signing of the agreement, it is regarded as construction work for the account of others. In that case, "normal" VAT rules apply (ie VAT is charged on the construction service and input VAT incurred in this connection may be deducted).

There are special rules for the construction of housing society dwellings.

If a taxable person constructs a building with its own staff for the use of its own activities, self-supply VAT is payable on work performed by the taxable person's own employees as well as materials used. The work performed includes both planning and designing the building as well as the actual construction work.

We would like to underline that the Danish VAT rules on immovable property are highly complex and require careful consideration and planning on a case-by-case basis.

## **9.4    *Adjustment of input VAT on immovable property***

Input VAT on the purchase or construction price of immovable property (including extensions, reconstructions and improvements) is monitored for 10 financial years, starting with the year in which the building was acquired or first used (the first financial year is included in the 10-year period).

If the taxable use of the immovable property changes during this period, the owner should either make an additional VAT payment or receive an additional VAT refund, depending on whether the taxable use has decreased or increased. This will be the case for example if a company first uses a building for fully taxable activities and after some years starts to use part of it for private purposes.

For repair and maintenance of immovable property, the adjustment period is 5 years. Such costs are subject to the adjustment liability only when the annual amount is DKK 100,000 (approx EUR 13,500) or more. Where the taxable person's recovery right is reduced compared to the year of purchase, acquisition or first use, the recovery rate must be adjusted if it has been changed by at least 10%. If the recovery rate increases, the taxable person may make an additional VAT deduction, regardless of the percentage increase.

The sale of immovable property not regarded as new buildings or building land has the same status as if the immovable property was used for VAT exempt activities for the remainder of the adjustment period. The seller must therefore repay the part of the input VAT deducted at the time of purchase that is attributable to the remainder of the adjustment period. However, the buyer may take over the remaining VAT adjustment obligation if both the seller and buyer are taxable persons with the same VAT recovery percentage. In this case, the seller will not have to pay back the adjustment amount.

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# ***10. Which administrative requirements should be met?***

## ***10.1 VAT registration in Denmark***

Foreign businesses which maintain a fixed establishment or carry out taxable transactions in Denmark are required to register for VAT purposes in Denmark (for detailed information, please see Section 1).

In our experience, the documents most often needed for Danish VAT registration are:

- Standard application form;
- Copy of the applicant's annual report (latest closed, short version);
- Statement from the tax authorities of the applicant's home country showing the applicant's VAT registration (for non-EU countries, a similar tax registration, or proof that the applicant carries out business activities).

Note that there is no standard list of required documents, and that the authorities have a right to request additional documents and information regarding the applicant and the planned activities if they find it necessary.

The application form must be submitted to the Danish Business Authority (Erhvervsstyrelsen) at least 8 days before the taxable activities are commenced. The registration certificate with a Danish VAT number (8 digits) will usually be sent to the applicant 3-4 weeks after the tax authorities have received all required documents. The Danish Business Authority (Erhvervsstyrelsen) must be notified of any subsequent changes to the registration information within 8 days of carrying out the change.

A foreign business cannot register for VAT purposes in Denmark if all its Danish supplies are subject to the reverse charge by a Danish customer (except if such supplies are made by a fixed establishment in Denmark).

If a person has a fixed establishment in Denmark or a Danish VAT number, this does not automatically entail a liability to pay Danish income tax on related income.

### **10.1.1 Businesses from other EU countries**

Businesses established within the EU, the Faroe Islands, Greenland, Iceland or Norway are not required to register via a fiscal representative resident in Denmark although they may opt to register via a representative.

When a fiscal representative is used in Denmark, the representative usually has the administrative responsibility for the VAT accounting and reporting to the tax authorities.

### **10.1.2 Businesses from non-EU countries**

Foreign businesses established in another country/territory than EU member states, Norway, Iceland, the Faroe Islands or Greenland which do not have a registered branch in Denmark must be registered for VAT purposes via a fiscal representative in Denmark. An engagement letter between the fiscal representative and the applicant has to be attached to the above-listed registration documents.

Most often it is banks, law offices, accounting firms and shipping/forwarding agencies which act as fiscal representatives. If the foreign business has a Danish affiliate or a subsidiary company, it is also possible that the affiliate acts as the representative for the foreign business. As the fiscal representative is jointly and severally liable for the payment of any outstanding VAT, a bank guarantee or other type of security is normally required by the representative.

### **10.1.3 VAT grouping**

Businesses carrying out only taxable activities may register jointly for VAT (ie form a VAT group). This implies that transactions between these businesses are not subject to VAT. Only transactions with parties not belonging to the VAT group are subject to VAT.

Subject to permission from the tax authorities, one or more taxable persons may form a VAT group with one or more entities that carry out non-taxable or non-economic activities. However, such permission can be granted only when one of the entities in the VAT group (eg a parent company) directly or indirectly holds 100% of shares of the other entities. This entails among other things that intra-group services such as management and administrative services are not subject to VAT. On the other hand, the group is entitled to recover input VAT on a pro rata basis only.

Members of a VAT group have joint liability for VAT. In practice, this liability concerns VAT due on transactions between the members and third persons as well as meeting all requirements in respect of accounting and reporting.

VAT grouping is only available for Danish registered entities. These include Danish subsidiaries and a registered Danish branch of a foreign parent company.

### **10.1.4 Businesses providing electronically supplied services**

Businesses that do not have a seat or fixed establishment within the EU and that only carry out electronically supplied services to non-taxable persons within the EU are required to register for VAT purposes in one EU member state only. This VAT registration would be valid for supplies within the whole EU area. A special scheme for VAT compliance obligations is available in such case.

## **10.2 Invoicing and archiving**

### **10.2.1 Invoicing requirements**

Taxable businesses are obliged to issue invoices to their customers for all supplies of goods and services. The invoice has two main purposes: documentation of a business transaction as well as basic documentation for VAT purposes (the seller's output VAT and the buyer's input VAT). Invoicing rules are almost harmonised in all EU countries with the new Directive from 2010<sup>9</sup>.

An invoice must contain at least the following information:

- Date of issue (invoice date);
- Invoice number (sequential number);
- Supplier's name, address and VAT number;
- Buyer's name and address;
- Quantity and nature of delivered goods or services;
- Date of delivery if the date is fixed and differs from the invoice date;
- VAT base (unit price excluding VAT and any rebates, bonuses or discounts if not included in the unit price);
- VAT rate; and
- Payable VAT amount.

It is allowed to use EUR or other foreign currencies in invoices. Invoices in foreign currencies must state the VAT amount in DKK or EUR.

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10) EU Directive 2010/45/EU



There are no official requirements for the invoice language. Invoices in English or Scandinavian languages are generally accepted by the Danish tax authorities; however, in case of invoices in other languages, the tax authorities have a right to request a translation.

### ***Special requirements for invoices related to supplies to/from other EU countries***

Invoices for intra-Community supply of goods must also state the buyer's valid VAT number and reference to zero-rated supply (eg "free of VAT", "zero-rated", or "momsfritaget").

Invoices for services subject to reverse charge VAT by an EU buyer must state the buyer's valid VAT number and reference to the reverse charge system (eg "reverse charge" or "omvendt betalingspligt").

There are no explicit requirements regarding the wording of these references and they may also be expressed either as a reference to applicable provisions of the Danish VAT Act, the Council Directive 2006/112/EC or similar.

Foreign businesses whose supplies to Danish customers are subject to reverse charge in Denmark must issue an invoice indicating the above-listed information, except for the payable VAT amount, as VAT is settled by the buyer. The invoice also has to show the customer's Danish VAT registration number, the supplier's registration number in the home country and a reference to the buyer's obligation to account for VAT (note "reverse charge" or similar).

### ***Self-billing***

It is accepted that the buyer issues the invoice instead of the seller if the parties have entered into a relevant self-billing agreement. Such self-billing invoice must contain the same information as an ordinary invoice, but the invoice must also make a reference to self-billing ("Self-billing" or "Selvfakturering"). The person who issues the self-billing invoice has an obligation to check for each invoice that the supplier has a valid VAT number.

If there is no agreement, the issuer must obtain specific acceptance from the supplier for each invoice.

A written agreement is not required. However, in case of a cross-border agreement, we recommend that the agreement be formalised in writing. (This recommendation is also made in order to ensure that the agreement is in accordance with legislation in both countries involved.)

### ***Special rules***

Special invoicing rules may apply in connection with the buying and selling of new vehicles, long-term leasing of private cars, barter transactions and electronic invoicing.

#### **10.2.2 Tax point**

The tax point is the exact time when the obligation arises to account for VAT on a given supply of goods or services. The EU VAT Directive provides 3 possibilities: (a) when the supply is actually taking place (ie the goods are physically delivered or a service is performed); (b) when the trade invoice is issued; (c) when the payment is received.

#### ***Main rule: Invoice date***

In general, when a trade invoice is issued just before or shortly after the supply has taken place, the tax point is the invoice date. Otherwise, the tax point is when the supply actually takes place.

If the payment for the supply of goods or services is made and no invoice is issued, the tax point is the end date of the period to which the payment relates.

#### ***Intra-Community supplies and acquisitions of goods***

In case of intra-Community supplies and acquisitions of goods, the tax point is deemed to be no later than the 15th day of the month following the month in which the supply/acquisition was carried out. If the invoice is issued before this date, the date of the invoice is the tax point.

#### ***Continuous intra-Community supplies of services***

If a supply of a service covers a period of more than one year and no VAT is settled within this period, VAT has to be settled at the end of each calendar year as from the second year, as long as the supply of this service has not been completed.

This, however, applies only to services supplied between taxable persons in different EU countries on which VAT is payable by the recipient according to the reverse charge system.

#### ***Prepayments***

Determining the tax point may be problematic in case prepayments are made. If the volume and nature of the goods/services to be provided are agreed at the time of prepayment, the time of the prepayment is the tax point (provided that a trade invoice is not already issued). At the same time, if the nature of the supply has not been agreed in a sufficiently detailed manner at the time of prepayment, the tax point is when the supply actually takes place.

There is a large number of situations in which the rules on prepayments have become increasingly relevant, eg prepaid mobile phone cards, e-accounts, gift vouchers as well as various promotion/marketing schemes involving two or more parties. This is partly due to more cross-border transactions, and partly to the fact that EU member states may interpret the EU provisions differently.

### **10.2.3 E-invoicing (electronic invoicing)**

E-invoicing may be used both for any internal supply in Denmark and for any cross-border supply. E-invoices must generally contain the same information as paper invoices.

The supplier has to determine a way to ensure the authenticity of the origin, the integrity of the contents and the legibility of the invoice. This may be achieved by a reliable audit trail between the invoice and the supply of goods or services.

Other technologies that may be used to ensure the authenticity of the origin and the integrity of the invoice are:

- An advanced electronic signature,
- Electronic data interchange (EDI).

E-invoices may only be issued if the buyer accepts this; however, the buyer is also regarded as tacitly accepting the e-invoice if, for example, the buyer has paid the invoice or entered it into its books.

In case more than one e-invoice is issued to the same customer, the information that is the same for all invoices need only be shown once presuming that there is access to all information for all invoices.

### **10.2.4 E-archiving**

As a general principle, Danish accounting records must be stored in Denmark. As an exception to this principle, however, electronic invoices may be stored abroad, provided that:

- The Danish tax authorities are notified of the storage location;
- The Danish tax authorities have full online access upon request;
- Storage does not take place outside the EU or the Nordic countries.

This exception to the general archiving principles concerning electronic invoices only applies to VAT. Additionally, requirements embodied in the Danish Bookkeeping Act<sup>11</sup> apply to the storing of accounting documents and records.

In addition, national bookkeeping regulations applicable in the country where the invoices are archived must be observed.

## 10.3 VAT returns

### 10.3.1 Tax period

The deadline for declaring and paying VAT depends on the annual taxable revenue of the business in question. The Danish tax authorities will notify the business of the applicable tax period.

A business with annual revenue of less than DKK 5,000,000 (approx EUR 666,667) must file a VAT return **bi-annually**. The VAT must be declared and paid at the latest on the first day of the third month after the expiry of the tax period.

The VAT period is a **calendar quarter** for a business with annual revenue of between DKK 5,000,000 and DKK 50,000,000 (approx EUR 666,667 – 6,666,667). The VAT must be declared and paid at the latest on the first day of the third month after the expiry of the tax period.

For businesses with annual revenue of more than DKK 50,000,000 (approx EUR 6,666,667), the VAT period is a **calendar month**. VAT must be declared and paid at the latest on the 25th day of the following month. However, VAT for June should be reported and paid by a specific date indicated by the tax authorities each year (around 17 August) as that is the main summer holiday period.

If the VAT return is due on a Saturday, Sunday or Bank Holiday, the deadline will be the next business day.

As a main rule, a newly registered business must declare VAT on a quarterly basis unless the expected annual revenue is more than approx DKK 55,000,000 (approx EUR 7,333,333) (in which case the VAT period is a month).

If a business only carries out taxable activities in Denmark for a short period (eg organising one conference or cultural event), the tax authorities may decide that the tax period is the actual period of activities. Relevant request should be made in the VAT registration application.

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11) Bogføringsloven

### **10.3.2 Information to be reported in a VAT return**

The following amounts must be reported in the VAT return for each tax period:

- Output VAT;
- VAT calculated on intra-Community acquisition of goods;
- VAT calculated on services that are bought from foreign suppliers and subject to reverse charge in Denmark;
- Deductible input VAT;
- Refundable amounts of specific excise duties (duties on various energy products and water);
- Value of goods acquired from other EU countries, VAT excluded (Box A – goods);
- Value of services purchased from other EU countries under the reverse charge system, VAT excluded (Box A – services);
- Value of intra-Community supplies of goods, VAT excluded (Box B – goods);
- Value of intra-Community supplies of services subject to the reverse charge in recipient's country, VAT excluded (Box B – services);
- Value of supplies that are zero-rated for VAT purposes (export of goods or services to non-EU countries, zero-rated supplies to Danish customers, etc) (Box C).

As a general rule, VAT returns must be filed via an online filing system of the Danish tax authorities (TastSelv Erhverv). As an exception, a business may request that VAT returns be filed on paper – in such case, a VAT return form with pre-printed information is forwarded to the business by the tax authorities.

VAT returns may be e-filed from abroad when the person to perform the filing has internet access, the VAT registration number of the business in question and the allocated PIN code (TastSelv-code). The PIN code is obtained free of charge from the Danish tax authorities and can only be used in relation to e-filing. If the business is registered in Denmark for any other taxes or duties and reports these by e-filing, the same PIN code provides access to all e-filed information.

The PIN code needed for e-filing is sent directly to the business's address. Consequently, the PIN code (and thus the access to the e-filing system on behalf

of the business) can only be forwarded to a third party (eg a service provider or accounting service centre) by the business itself. No other specific rules in terms of safety measures apply.

Instructions in English, German and French are provided directly on the Danish tax authorities' website [www.skat.dk](http://www.skat.dk), including a short demo of the e-filing procedure.

It is very important to ensure that any payment of VAT due is easily identifiable by the Danish tax authorities. In order to do so, any such payment must be accompanied by the company's VAT registration number.

## ***10.4 Reporting to the VAT Information Exchange System (VIES)***

Businesses supplying goods and services subject to zero-rate or reverse charge to taxable customers in other EU countries exclusive of Danish VAT must report the value of such supplies to the Danish tax authorities, specifying the total supplies per customer in the period in question. This reporting system is known as "sales listings" or "EU sales listings" in the common language.

The reports must be submitted on a monthly basis by the 25th of the next month. There is also an option to file the reports on a quarterly basis if the business's revenue remains below a certain threshold and if the company is not reporting VAT on a monthly basis.

As a general rule, the sales listings must be filed electronically via the online self-service system of the Danish tax authorities. A business may also request that the sales listings be filed on paper.

## **10.5 Intrastat**

Businesses having intra-Community acquisitions of goods in the amount of at least DKK 6,000,000 (approx EUR 800,000) or intra-Community supplies of goods exceeding DKK 4,500,000 (approx EUR 600,000) must submit Intrastat reports to the Danish statistical authorities once a month. The deadline for submitting the report is the 10th working day of the following month, irrespective of whether any relevant transactions actually took place within the reporting period.

Businesses that have to submit Intrastat reports will be notified by the Danish Statistical Office (Statistics Denmark). Intrastat reports may be submitted by Internet, using a free of charge software programme (IDEP) obtained online or on a CD-Rom from the Danish Statistical Office.

## **10.6 Sanctions**

The most typical VAT related offences are errors caused by negligence (eg failure to meet the deadlines), which may cause minor surcharges for reminders etc. In case of late payments, interest will accrue. Other typical VAT offences include submitting incorrect or misleading information, withholding information or supplying/purchasing goods/services subject to VAT without paying VAT due or stating VAT in the invoice.

Offences that occur due to gross negligence or wilful intent are sanctioned. If a person violates the VAT regulations with the purpose of avoiding the payment of VAT due or to obtain unjustified VAT refunds, he or she may be subject to a fine in the amount of 1-2 times the total evaded amount, detention or imprisonment for up to two years. In case the offence may be attributed to a company as such, a fine is imposed on the company.

Notifying the Danish tax authorities of an offence may reduce (or even avoid) sanctions, provided that the violation of the VAT provisions is not due to wilful intent. If a violation of the Danish VAT Act occurs in a field with especially complex VAT rules, the fine may also be reduced (unless it can be proved that the violation was committed intentionally).

## **10.7 Corrections to VAT returns**

VAT payments are open for review for a period of 3 years, beginning from the due date of the respective VAT return.

For businesses settling VAT on a quarterly basis, this implies that the VAT payment relating to eg the 4th quarter of 2016 remains open until 1 March 2020.

For businesses settling VAT monthly, this implies that the VAT payment relating to eg the month of December 2016 remains open until 27 January 2020.

This three-year time limit applies to both the authorities and businesses.

In special circumstances, a business may apply to have its case reopened after the expiry of the three-year limit. This could be if previous practice/case law is changed by the Danish National Tax Tribunal, a ruling, a European Court ruling or other published amendment.

A similar deviation from the general three-year limit is available for the tax authorities in case for example a tax audit reveals that a business has violated VAT rules intentionally and covered up so that the facts could not previously have been known to the authorities.



VAT payments are open  
for review for a period of

***3 years***

# Appendix

## **Addresses and contact details**

### ***The Danish Tax Authorities***

SKAT

Nykøbingvej 76

Bygning 45

DK-4990 Sakskøbing

Tel. +45 72 22 18 18

[www.skat.dk](http://www.skat.dk)

### ***Danish Ministry of Taxation (Skatteministeriet)***

Nicolai Eigtveds Gade 28

DK-1402 Copenhagen K

Tel. +45 33 92 33 92

[www.skm.dk](http://www.skm.dk)

E-mail: [skm@skm.dk](mailto:skm@skm.dk)

### ***Danish Business Authority (Erhvervsstyrelsen)***

Langelinie Allé 17

DK-2100 Copenhagen

Tel +45 35 29 10 00

[www.danishbusinessauthority.dk](http://www.danishbusinessauthority.dk)

E-mail: [erst@erst.dk](mailto:erst@erst.dk)

Post address for submitting VAT registration applications:

Postboks 600

0900 Copenhagen C

### ***Statistics Denmark (Danmarks Statistik)***

Sejrøgade 11

DK-2100 Copenhagen Ø

Tel. +45 39 17 39 17

[www.dst.dk](http://www.dst.dk)

E-mail: [dst@dst.dk](mailto:dst@dst.dk)



