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COUNTRY

Doing Business in
Denmark

Preface

This guide has been prepared by Dansk Revision, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in Denmark.

Baker Tilly International is the world's 8th largest accountancy and business advisory network by combined fee income, and is represented by 145 firms in 110 countries and over 25,000 people worldwide. Its members are high quality, independent accountancy and business advisory firms, all of whom are committed to providing the best possible service to their clients, both in their own marketplace and across the world.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be downloaded from www.bakertillyinternational.com.

Doing Business in Denmark has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing. The information contained in this guide reflects new rules that come into force from 1 January 2010.

Up-to-date advice and general assistance on Danish matters can be obtained from Dansk Revision; contact details can be found at the end of this guide.

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1 Fact Sheet

Geography

Location	Northern Europe, bordering the Baltic Sea and the North Sea, on a peninsula north of Germany (Jutland) which also includes two major islands (Sjælland and Fyn)
Area	43,000km ²
Land boundaries	Germany
Coastline	7,314km
Climate	Temperate
Terrain	Agricultural lowland
Time zone	GMT +1

People

Population	5.4 million
Religion	Christianity, Islam and others
Language	Danish is the official language. Many Danes also speak English

Government

Country name	The Kingdom of Denmark
Government type	Parliamentary
Capital	Copenhagen
Administrative divisions	Denmark is divided in 98 communities (<i>kommuner</i>) and five regions
Political situation	Denmark is a constitutional monarchy, ruled by Her Majesty Queen Margrethe II since 1972. The first free and democratic constitution was adopted in 1849 and a two-chamber parliament was formed a year later. The upper chamber was abolished in 1953, placing all political authority in the former lower chamber (the <i>Folketing</i>). Elections for the parliament (<i>Folketing</i>) are held every four years, according to proportional representation

Economy

GDP – per capita US\$37,000 (2008)

GDP – real growth rate 0.1% (2009)

Labour force 2.9 million

Unemployment 1.8% (2008)

Currency (code) Danish kroner (DKK)

2 Business Entities and Accounting

The most common forms of business entity are personally-owned businesses, private limited companies, partnerships and public limited companies. Other corporate vehicles exist but are rarely used.

2.1 Personally-owned Businesses

The personally-owned business is the most common type of business organisation in Denmark.

It works in the same way as a company, but the business is not a legal entity. Taxation flows through to the owner who is fully liable for the business' debts and liabilities.

Two or more people who come together to form a personally-owned business form a partnership (see 2.3).

2.2 Private and Public Limited Companies

A limited company is a legal entity which is taxed in its own right and the liability of the owners is limited.

One or more individuals or entities can establish a limited company. There are generally no restrictions as to who can own shares, except in specific industries (eg accounting, health, etc).

There are two types of limited liability company – *Anpartsselskab* (ApS) and *Aktieselskab* (A/S).

The minimum required capital for an *Anpartsselskab* (ApS) is DKK80,000. It does not require a board of directors but must have a managing director. The ApS is the usual structure for smaller companies and holding companies. The ApS may offer shares to the public but its shares may not be listed on the stock exchange.

The minimum required capital for an *Aktieselskab* (A/S) is DKK500,000. Only DKK125,000 must be paid up on incorporation. The A/S must appoint a board of at least three directors and a managing director. From 1 January 2010 the A/S may elect to have a managing director and a supervisory board. The A/S is the usual structure for larger companies. The shares of an A/S may be listed on the stock exchange.

Both the ApS and A/S are able to issue one or more share classes. If more than one class exists, one or more of nominal value, dividend rights, or voting rights must differ from the other class or classes.

Incorporation is quick and relatively simple.

Anyone who wants to do business in Denmark should be familiar with Danish company legislation.

2.3 Partnerships

The partnership (I/S) is not a legal entity; it is based on an agreement between two or more partners (individual or legal) operating under a common name. The partnership can hold property, can contract in its own name and can sue and be sued. The partners are jointly and severally liable for partnership debts. Partners are taxed individually on their share of partnership profits.

A partnership must be registered with the Danish Commerce and Companies Agency (*Erhvervs- og Selskabsstyrelsen*) if all partners are limited companies.

A limited liability partnership (K/S or P/S) takes the form of a general partnership. In addition to one or more general partners who are jointly and severally liable, a K/S or P/S must have one or more limited partners whose liability is limited to the amount of their capital contribution. The general partner is commonly a limited company.

The K/S and P/S are typically used in the real estate, ship production and freight industries.

2.4 Joint Ventures

Two companies conducting a business together are considered to be a partnership in both tax and legal matters. Accordingly, the two companies will be taxed individually on their respective shares of the joint venture result. A joint venture in relation to the Annual Accounts Act must be considered to be a subsidiary.

Often two companies form a joint venture as a partnership rather than a limited liability company for tax reasons.

A joint venture requires detailed contractual agreements between the parties as Denmark has no specific legislation relating to joint venture agreements.

2.5 Branches

An overseas company wishing to conduct activities of a financial or commercial nature in Denmark without forming an entity may do so by establishing a branch.

A branch office of an overseas company must be registered with the Danish Commerce and Companies Agency. In practice it can be difficult to determine whether or not a branch has been established and caution should be exercised in this regard.

The branch office must have a branch manager.

A branch is not considered a separate legal entity and all legal responsibilities and liabilities rest with the parent company. The branch office must have its own bookkeeping records separate from those of the parent company. The financial statements and the auditor's report must, together with the corresponding documents for the overseas company in its entirety, be submitted to the company registry annually.

It is also possible for an overseas company to run its operations in Denmark through a broker, a commission agent, or some other independent representative.

2.6 Audit, Accounting and Filing Requirements

All business entities, individual or legal, must comply with the Bookkeeping Act 1998 (*Bogføringslov*) and the Annual Accounts Act 2001 (*Årsregnskabsloven*).

Under the Bookkeeping Act, business entities must:

- Account for all transactions systematically and chronologically and ensure that all transactions are supported by appropriate documentary evidence
- Prepare annual accounts
- Retain all accounting material in Denmark for five years
- Parent companies, other than small private parent companies, must prepare consolidated accounts.

The fiscal year-end for business entities is 31 December.

If the accounting records are held in a currency other than DKK, they must hold information about the rate and other information that makes it possible to recalculate into DKK.

The Annual Accounts Act prescribes the format of the annual accounts.

A non-deductible fee of DKK3,000 is imposed if a limited company does not submit its annual accounts and the auditor's report to the Danish Commerce and Companies Agency within five months after the year-end. The Danish Commerce and Companies Agency has the power to liquidate a limited company one month after the end of the five month deadline if the accounts are still not submitted.

An audit is required for all legal entities. In certain cases small companies may be exempt. Partnerships where all partners are limited liability companies must be audited. Limited entities must have their annual accounts audited by a state authorised public accountant (*Statsautoriseret Revisor*) or certified public accountant (*Registreret Revisor*).

2.7 Registration for Foreigners

When a foreigner sets up a limited liability company in Denmark they must present a copy of the directors' passports to verify their identity. A CPA should certify that the required share capital is paid to the Danish company's bank account or similar.

3 Finance and Investment

3.1 Exchange Control

There are no exchange controls in Denmark on inward or outward investment. Foreign currencies can be bought and sold freely. There are no restrictions on foreign currency bank accounts in Denmark.

3.2 Banking and Sources of Finance

There are a number of ways in which businesses can obtain finance in Denmark.

Equity finance can be raised on the stock exchange. The Nasdaq OMX Nordic is the largest exchange in the Nordic countries for raising finance. The First North Exchange, operated by Nasdaq OMX, offers listing opportunities for small and medium-sized businesses.

Venture capital is also available, but is typically used in certain business sectors, eg IT, medical, etc.

Businesses also have access to mortgage finance, commercial loans and credit facilities.

3.3 Tariffs

Custom and exchange is handled by SKAT and is based on the European Community Common Custom Tariff (CCT).

3.4 Foreign Investment Incentives/Restrictions

Various government incentives are available and include:

- Tax deductions for research and development expenses
- Funding for projects within advanced technological research
- Attractive tax regime for foreign key personnel
- Labour market related incentives.

The Danish Government has no protectionist measures in place, nor does it discriminate against nationals and foreign individual in setting up a business or company.

4 Employment Regulation and Social Security Contributions

4.1 Entry Visas and Work Permits

Denmark is party to the Schengen Agreement, which determines which nationals require a visa to enter Denmark – a full list can be found on The Danish Immigration Service website.

Those requiring an entry visa must obtain the visa from a Danish embassy or consulate. Visas are valid for a maximum of three months, but may be extended.

Citizens of EU nations may take jobs and reside in Denmark, however, EU and EEA citizens must, after three months, obtain a residence permit thereby notifying the authorities of the individual's chargeability to tax and entitlement to state benefits.

Citizens of countries other than EU and EEA nations must apply for a residence and work permit at a Danish embassy or consulate. The permit must be granted and entered into the individual's passport before they enter Denmark. Work permits are granted for one year; extensions may be granted in Denmark.

4.1.1 Residence permit to establish a company

Citizens of EU and EEA nations do not need a special permit to establish a company. Citizens of other countries must obtain a residence permit before setting up a company or becoming a partner in a partnership.

A residence permit may be obtained to run a personally-owned business if Denmark has a commercial interest in bringing/keeping the business inside the nation. Documentary evidence of capital requirements, a detailed business plan, profit and liquidity budgets and a CPA's opinion must be submitted as part of the application.

The permit is valid for 12 months. Extensions are granted only after proof is given to the relevant government department of the success of the personally-owned business and the applicant's ability for self-support.

4.2 Labour Market

The Danish labour market is principally regulated with the help of collective agreements between the employers and the unions. The agreements typically run for four years and bind both employer and employee.

Many employees are members of a union and are assured against unemployment.

4.2.1 Labour law

Several laws govern Denmark's labour market.

The Salaried Employee Act sets out the rights and obligations of salaried employees, eg the right to sick pay.

The Vacation Act specifies the rights and obligations of salaried employees regarding paid holiday entitlement.

Under the Working Environment Act, every business with employees must have certain security systems to minimise industrial accidents.

Under the Anti-Discrimination Act, any discrimination based on gender, nationality, religion, or culture is illegal in Denmark.

4.3 Social Security

An individual residing in Denmark is covered by the Danish social security system. The principal benefits are free healthcare, parental allowances, national basic pension, partial pension (for persons resident in Denmark for only part of their working life), early retirement pension, occupational injuries insurance and unemployment support.

Most of the welfare benefits are financed through personal taxes. The employer pays a nominal monthly fixed pension fee for every employee (Labour Market Supplementary Pension, ATP).

Employees pay a general labour market contribution of 8% allocated to labour market improvements.

All labour costs are deductible for employers. Pension payments made by individuals are deductible.

4.4 Sick Pay

The employer pays full pay the first 14 days of an employee's illness. After that the social welfare system takes over the statutory payments. Smaller employers can buy insurance to cover days 2 to 14.

4.5 Maternity/Paternity Leave

Generally, a father is entitled to two weeks of paid paternity leave; a mother is entitled to 18 weeks of paid leave – four weeks before the birth and 14 weeks after.

5 Taxation

Denmark has a sophisticated tax system for both companies and individuals. The rules and interpretations change often and it is important that the taxpayer seeks professional advice before making decisions that may have tax implications.

5.1 Taxation of Individuals

5.1.1 Residents

Residents of Denmark pay Danish tax on their worldwide income.

An individual is regarded as a resident of Denmark if they stay in Denmark for longer than six months or own residential premises in Denmark.

Non-residents are taxed only on their Danish income.

5.1.2 Income from employment and self-employment

Income from employment includes basic pay and overtime, holiday pay, holiday allowance, sick pay, perks, business earnings from partnerships and personally-owned employment.

Denmark's tax system divides income into categories, each with their own allowances.

Broadly, the tax rate for annual income up to DKK46,600 is 8%. Income exceeding DKK46,600 and up to DKK423,800 is taxed at 42%. Income exceeding DKK423,800 is taxed at a rate of 55%.

Individuals are entitled to a basic personal allowance and married couples may transfer allowances within each category of income.

5.1.3 Foreign individuals in Denmark

Tax relief is granted for foreign experts, scientists and key personnel employed by Danish employers and foreign employers with a permanent establishment in Denmark. The relevant individuals must possess knowledge and skills that cannot be found in Denmark.

In order to qualify, the pay must be at least DKK63,800 per month or the person must be approved scientist by a public Danish scientific institution.

The tax payable by the individual is 25% for three years or 33% for five years. Social security contribution is payable separately.

The system has a number of regulations. Most important is that the individual must not have been liable to tax in Denmark in the three years preceding the start of the engagement and must not have been part of the management of the employer in the five years preceding the start of the engagement.

The individual has no rights to deductions against the taxable income. The engagement must not exceed 60 months within a ten-year period.

5.1.4 Deductible expenses for individuals

Denmark allows deductibility of expenses that are directly linked to the individual's work. Deductions for personal living expenses are never allowed.

The most common deductions are for travel to and from work, which are deductible if one travels for more than 12 kilometres to work. Deductions are given at a fixed amount per kilometre, which is adjusted every year.

Also expenses for labour union and unemployment insurance may be deductible. Other expenses are judged on a case-by-case basis.

5.1.5 Tax on income from capital

Income from capital includes interest, sales of property and tenant-ownership rights and dividends. Please see sections 5.4 and 5.6 regarding dividends and capital gains.

Income from capital is declared in the tax return. It is part of total taxable income, but is not subject to labour market contributions. The effective marginal tax rate on income from capital is 51.5%.

Capital gains on personal residential properties are tax free (provided that the property has served as the owner's personal residence). Losses on personal residential properties or equivalent are not deductible.

Capital gains on commercial properties are taxed under specific rules (Property Profit Tax Act). Losses on commercial properties are deductible against profits on other property transactions, and can be carried forward indefinitely.

Property tax is discussed in section 5.5.

5.1.6 Non-residents

Non-residents are liable to taxation in Denmark on:

- Earned income if the work is performed in Denmark
- Certain pensions (depending on double tax agreements)
- Income from a permanent place of business in Denmark
- Income from property located in Denmark
- Capital gains arising on the sale of property located in Denmark (unless covered by exemption for personal residence).

5.1.7 Wealth tax

Denmark has no wealth taxes.

5.1.8 Preliminary tax (PAYE)

An employer has an obligation to withhold employees' taxes and send them on to the tax authorities on a monthly basis as a preliminary tax.

Individuals running a personally-owned business must file an estimate of the income for any given year. Using the estimate of the income, the tax authorities send out ten payment orders to be paid each month (no payments in June and December).

Individual employees and major shareholders (> 50%) must file their tax return within four months of the fiscal year-end to the local tax office. Individuals owning a personally-owned business or partners within a partnership must file their return within six months.

5.1.10 Final tax

The tax authorities issue a final tax statement and a statement of account in response to the tax return. If the preliminary tax paid exceeds the final tax charge, the surplus is refunded. Outstanding tax is payable in September, October and November.

5.2 Taxation of Companies

5.2.1 Limited companies

A Danish limited company pays a national income tax of 25% on worldwide income. Profit calculations are based upon the annual report prescribed by civil law, and the fiscal income assessment is based on the realised results of operations.

All sources of income are grouped together and termed income from business operations.

5.2.2 Depreciation

In the annual accounts, all companies must depreciate their assets. This is added back for tax purposes and the following allowances are given:

- Patents, trademarks, goodwill and other intangible assets have a linear depreciation of 20% a year
- Development costs can be written off immediately in the year of acquisition
- Property is depreciated using the straight line method over the expected useful life of the property. Normally, property is depreciated at 5% per annum
- Property used as office space, etc is not depreciated
- Machinery, equipment, fixtures and fittings with an expected useful life of less than three years or a very low value may be written off immediately in the year of acquisition. Software is also written off immediately, regardless of the value or lifetime. Other machinery and equipment may be depreciated using the reducing-balance method at 25%.

5.2.3 Tax losses

Losses on the sale of shares held for investment are not deductible and losses on portfolio shares can only be deducted from similar taxable gains.

Losses on business operations and on the sale of portfolio shares are carried-forward indefinitely. However, there are restrictions for previous losses on the change of ownership.

5.2.4 Holding companies

A Danish limited company can sell shares in another limited company and elect to have the profit (or loss) tax free (or not deductible) if the company owns 10% or more of the other company, regardless of how long the shares has been owned.

A Dividend paid to a Danish limited company is tax free if the Danish company owns 10% or more of the company.

Interest expenses are generally deductible. Thin capitalisation rules apply.

5.2.5 Dealing with groups of companies

Danish companies are treated fiscally as groups when a parent company directly or indirectly holds more than 50% of the voting rights of a Danish legal entity. Each company is taxed separately but the tax is collected from the parent company.

Non-Danish companies can also be part of the taxable group. If the parent company elects for group taxation all controlled foreign companies shall be part of the group taxation.

Losses can be transferred between group companies.

5.2.6 Branch office

A foreign company with a permanent establishment in Denmark is subject to tax on income arising from business operations conducted in Denmark.

A foreign company conducting business in Denmark is only liable to tax in Denmark if it has a permanent place of business in Denmark. This could be relevant when, for instance, an overseas company conducts business through the agency of a broker, a commission agent, or another independent agent.

The permanent place of business can be a branch office, an office, a factory, or similar. A permanent place of business can also be an individual and a dependent representative, if the person in question has, and regularly makes use of, a power of attorney to enter into agreements in the name of the foreign company.

A branch office constituting a permanent place of business in Denmark is taxed in accordance with the normal rules on income from a business operation, in the same way as if the business had been conducted via a Danish limited company.

Expenses relating to the business, including expenses relating to the enterprise's management and general administration, are deductible.

5.2.7 Partnerships and limited partnerships

In spite of the fact that partnerships and limited partnerships are legal persons that can enter into legally binding agreements, they are not taxable as an entity.

Instead it is the owners that are taxable for their share of the profits of the partnership. Co-owners who are legal entities will also be taxed on their part of the profit of the partnership. The profit is aggregated with other incomes into one income source. For individual co-owners, the profit is taxed at the same rate as applies to the earned income.

5.3 Taxation of Dividends

Dividends paid by a Danish limited company to another Danish limited company are tax exempt if the receiving company owns 10% or more of the shares in the paying company.

If the ownership is less than 10% the receiving company will be taxed on the dividend income.

An individual receiving dividends or making a capital gain on shares is taxed at 28% on dividend income lower than DKK48,300 and 42% for dividend income in excess of this amount.

A withholding tax of 28% is due when a Danish company distributes a dividend that is taxable on receipt. The rate may be reduced according to tax treaties if the recipient is a foreign individual or company.

5.4 Taxation of Property

An annual property value tax is charged on most properties occupied by the owner. The property value tax is approximately 1% of the tax assessment value.

The tax assessment value is broadly equivalent to the property's market value. The tax authority decides the tax assessment value. A general property tax assessment is performed every two years.

Renting out private or commercial property is considered a business and will be taxed on the individual or company owning the property.

Denmark also charges a land tax on all property (between 12% and 34% of the tax assessment value depending on the geographical position) payable to the relevant local authority.

5.5 Taxation of Capital Gains

Generally, capital gains are taxed on realisation. See 5.3 Taxation of Dividends for applicable rates.

5.5.1 Profit from sale of property

Profits arising from the sale of commercial property are generally subject to property profit tax. Profits are aggregated with other sources of income.

5.5.2 Profit from the sale of shares

Taxation of capital gains from the sale of shares is complex.

If the shares are owned by a company it is necessary to determine the nature of the shares. There are, in general, two categories – shares in subsidiaries and portfolio shares.

Capital gains on shares in subsidiaries are not taxed and losses cannot be deducted.

Capital gains on portfolio shares are taxed and losses can only be deducted in taxable profit on other portfolio shares and be carried-forward indefinitely.

5.6 Value Added Tax (VAT)

VAT is levied at each stage in the chain of production and distribution of goods and services and on the importing of goods. VAT is charged at 25% on the sales value of the goods or services excluding VAT. Credit is given for VAT suffered on purchases.

If output VAT exceeds input VAT the excess is payable to the tax authorities. Refunds are made when input VAT exceeds output VAT.

VAT liable persons are persons conducting a trade or business, including individuals and legal entities including public bodies.

The tax rate for VAT in Denmark is 25%. Certain services are exempt from VAT, for example:

- Medical care, dental care and social services
- Certain types of education (primary and secondary schooling and further and higher education)
- Insurance services
- Letting of real property is exempt from VAT, although it is possible under certain conditions to register for VAT voluntarily
- Transport of passengers.

Suppliers of exempt services are not liable to VAT and may not reclaim input VAT suffered.

If VATable turnover exceeds DKK15m VAT must be reported and paid on a monthly basis. If VATable turnover exceeds DKK1m VAT must be reported and paid on a quarterly basis. If VATable turnover is less than DKK1m VAT may be reported and paid on a half-year basis.

If an entity makes both exempt and chargeable supplies input VAT may be deducted after allocation.

Goods and services leaving Denmark for another EU country are exempt if the EU customer provides a VAT number. Otherwise, VAT is charged at 25%. The same applies for goods and services exported from another EU country into Denmark.

When foreign companies without a permanent establishment in Denmark, supply goods or services in Denmark, the Danish customer is liable to report and pay VAT (reverse charge mechanism) if the customer is registered for VAT. The reverse charge mechanism is not valid for foreign companies supplying goods or services to persons not registered for VAT.

Foreign companies without a permanent establishment within the EU or Norway must appoint a fiscal representative.

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Notes



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