

NEW RULES

for transfer pricing documentation from income year 2021

New rules for the submission of transfer pricing documentation (TP documentation) imply significant changes for multinational groups with activities in Denmark. The changes oblige those enterprises covered by the TP documentation requirements to compile and submit annual TP documentation for their internal invoicing prices.

2022

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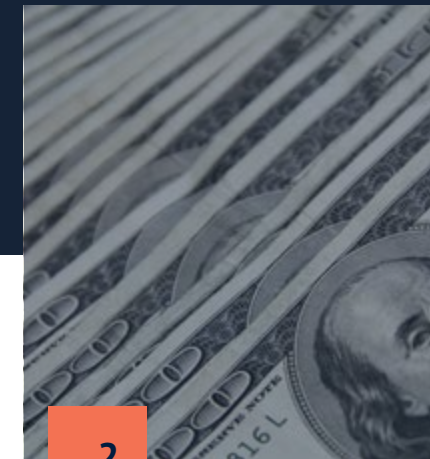
01 Who is covered by the documentation requirements?

The duty to compile and submit annual TP documentation for the internal invoicing prices used by groups that fulfil one of the three conditions below.



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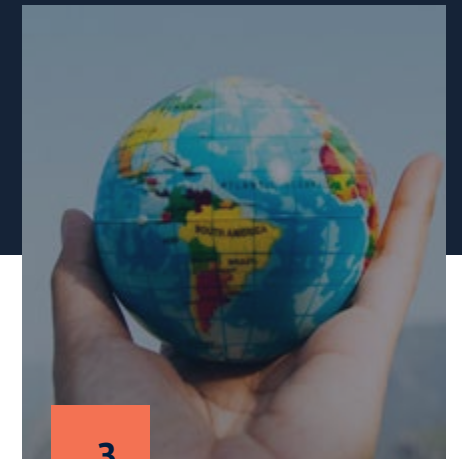
Groups with 250 or more employees globally



2

Groups with less than 250 employees but with

- 1) an annual total balance sheet of DKK 125 m or more, or
- 2) an annual turnover of DKK 250 m or more



3

Groups with international controlled transactions with entities in tax haven countries

For purely Danish transactions

In principle, groups with transactions of a purely Danish nature are exempted from the extended documentation requirement.

Turnover and the balance sheet must be compiled at the end of the income year according to accounting standards and on a consolidated basis. More details on which transactions are covered by the documentation duty are given below.

02 New deadlines for submitting transfer pricing documentation

According to the rules to date, TP documentation only had to be supplied to the Danish Tax Authority upon request. These rules continue to apply for income years starting before 1 January 2021.

According to the new rules, TP documentation must be submitted to the Danish Tax Authority within 60 days of the submission date (which coincides with the deadline for submission of tax returns, 30 June 2022). That means that submission of TP documentation for enterprises using the calendar year as their accounting year will have to submit for the first time on Monday 29 August 2022, and for each subsequent year. For those enterprises with an income year already started on 1 January 2021, the new submission rules will start to apply for income year 2022.

The requirement for mandatory submission is designed to increase focus on the economic arguments for pricing of the controlled transactions, and to ensure planning by the enterprises of how the necessary documentation can be provided and completed to a satisfactory level.



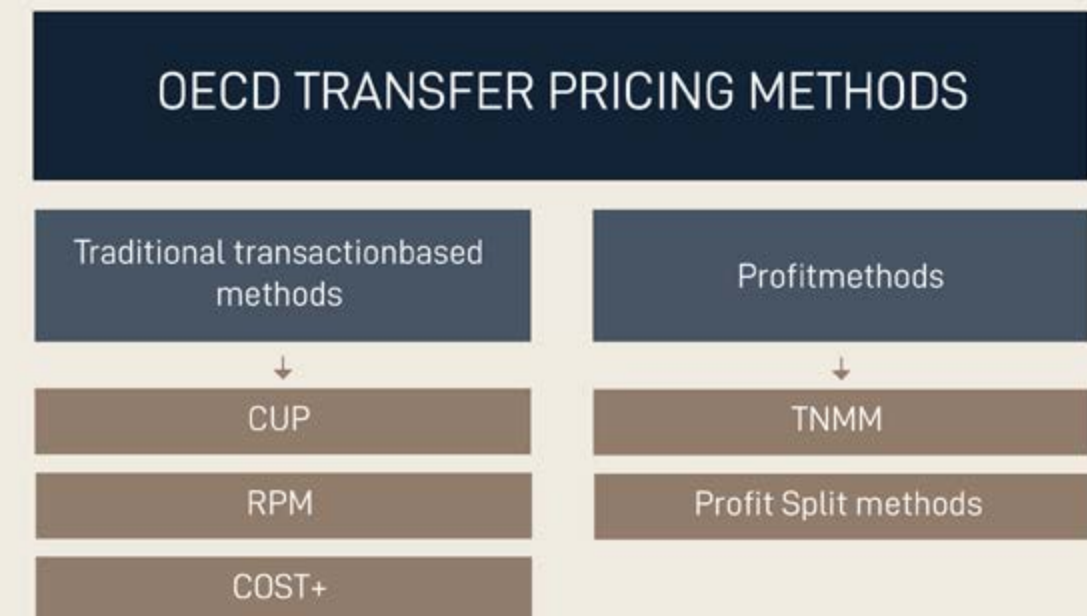
03 Requirements for the content of transfer pricing documentation

TP documentation consists of a three-part documentation duty, consisting of a master file for the entire group, national documentation (local file) and a country-by-country report containing standardised and schematic details on the group.

See Appendix 1 for details of the requirements included for each of the above areas.

04 How to find arm's-length prices for a controlled transaction

Section 2 of the Danish Tax Assessment Act is the central provision for TP and the requirement that controlled transactions have to be made on arm's-length terms. 'Arm's-length terms' means that prices, terms and conditions of trading have to be determined in the same way as independent trading partners would have determined them. The OECD has recommended five different methods of setting prices that can be used to test whether pricing of a controlled transaction complies with the arm's-length principle. Those methods are therefore not necessarily compulsory for pricing, but are often used in practice for that purpose. They imply economic measurement of the controlled transaction and comparable transaction and differ in that the details used for comparison are based on different levels of the income statement. Choice of method to be used depends on what functionality each party has in a controlled transaction, how precise the results are from the method and what data is available.



Comparable Uncontrolled Price Method (CUP)

CUP is an arm's-length test that compares the price in a controlled transaction. It's usually used when the transaction concerns standard goods, when several companies offer the same goods, which are also perceived as being the same.

Resale Price Method (RPM)

RPM is an arm's-length test that compares the gross profit margin for a controlled transaction. It's usually used for the purchasing company that exercises a sales and distribution function, when buying goods from group companies without adding extra value to the goods before they are resold.

Cost plus

Cost plus is an arm's-length test that compares the gross profit margin for a controlled transaction. It is based on the selling company's direct- and indirect production costs added to a mark-up.

Transactional Net Margin Method (TNMM)

TNMM is an arm's-length test that uses the net profit margin to compare Profit Level indicators (PLI) for a controlled transaction. It can be used for the purchasing or selling company, typically for companies within production, sales and service.

Profit split

Profit split is an arm's-length test that compares the distribution of a company's profit (loss) for a controlled transaction. Distribution of profit must be made on the basis of the relative value of the contributions of the parties to the transaction. It's usually used when both parties make unique and valuable contributions in relation to a controlled transaction.

05 Transactions covered by the documentation duty

As a rule, all controlled transactions are covered by the documentation duty. Although there are certain exceptions for transactions of a purely domestic nature, i.e. exclusively Danish trading, and a few controlled transactions of insignificant economic scope. Only which transaction type is involved needs to be stated.

None of the above exceptions are covered by the documentation that has to be submitted to the Danish Tax Authority. Although the arm's-length principle does still apply, which is why the Authority when conducting a control will still be able to ask for the necessary documentation for pricing of the controlled transactions.

06 Missing or incomplete TP documentation

If the TP documentation is not submitted on time, the Danish Tax Authority will be entitled to make an estimate of taxable income.

If TP documentation is submitted with incomplete areas, the same applies as for non-submission, which also entitles the Authority to estimate the taxable income. For example, the submission of documentation without a comparison analysis will be regarded as incomplete.

The new changes and latest practice show the importance of these formal rules, including when the Danish Tax Authority can make an estimate. If complete TP documentation is submitted on time, the Authority has to prove that the price set by the enterprise does not comply with the arm's-length principle. The burden of proof reverses if the enterprise fails to submit its TP documentation on time, or if it is incomplete. The Authority can then make an estimate, and the enterprise has the burden of proof that the Authority's estimate is clearly unreasonable and does not comply with the arm's-length principle. This burden of proof has been shown to be difficult to achieve which is why submission is very important.

Apart from the right to make an estimate, the Danish Tax Authority has the right to issue fines for failure to comply with the rules for compiling TP documentation. The fine is usually DKK 250,000 per income year per company for the years in which complete TP documentation was not compiled or submitted on time. If the correct documentation is subsequently submitted, the Authority can reduce the fine to DKK 125,000. A fine of 10% of any increase in income can be added as a result of the Authority's estimate of taxable income.

If you have any questions,

or need help to compile or check your
documentation, please contact your local
Dansk Revision office.

DANSK REVISION

Transfer pricing documentation