



APA & MAP Country Guide 2019 – Denmark

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



Denmark

APA Program

KEY FEATURES	
Competent authority	Danish Tax Office (SKAT)
Relevant provisions	Guidance 'CD.11.13 Advance Pricing Agreements' available on the SKAT website (Danish only).
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	There are no requirements as to the complexity or the value of the transactions; however, SKAT may ask that more transactions and/or more affiliates be included to accept an APA.
Key timing requests, deadlines	No specific guidance
APA term limits	While there are no general term limits, APAs will typically run for five years.
Filing fee	There is no filing fee.
Rollback availability	Rollback is available on request, although rollbacks will not prevent SKAT from initiating tax audits of previous income periods.
Collateral issues	If SKAT already has initiated a tax audit, it may decide not to accept an APA application.

PRE-FILING REQUIREMENTS

Overview	SKAT recommends pre-filing meetings with the Taxpayer. To initiate pre-filing the Taxpayer should engage in informal dialogue with SKAT and take part in pre-filing meetings to discuss the transactions to be covered in the APA and the information that will be required in the formal application. Any foreign tax authorities relevant to the discussions should also be involved.
Anonymous pre-filing availability	While there is no specific guidance, SKAT is often willing to discuss questions on an anonymous basis at their discretion.

APPLICATION REQUIREMENTS

Content of application	<p>After pre-filing meetings, the Taxpayer should prepare and file an APA application, which must include:</p> <ul style="list-style-type: none"> • a description of the enterprise and the market; • a description of the controlled transaction(s), including a functional analysis; • a comparability analysis; • a description of the adopted TP method(s); • critical assumptions; and • annual reporting on compliance (proposed by the taxpayer, typically a compliance statement made in connection with filing income tax returns).
Language	The documentation may be submitted in Danish, Norwegian, Swedish or English.
SME provisions	No specific guidance

OTHER PROCEDURAL CONSIDERATIONS

General	SKAT follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
Monitoring & compliance	The Taxpayer must file an annual compliance statement, stating that the basis and conditions for concluding the APA remains unchanged and the Taxpayer is not in breach of any critical assumptions. This should be filed together with the income tax return.
Renewal procedure	Existing APAs may be extended provided that the basis and conditions for concluding the APA remain materially unchanged, and the Taxpayer notifies SKAT in due time before expiry.

MAP Program

KEY FEATURES

Competent authority	Danish Tax Office (SKAT)
Relevant provisions	There are no specific provisions for the MAP procedure in domestic law. Taxpayers must rely on the MAP provisions under DTTs.
Acceptance criteria	No specific guidance.
Key timing requests, deadlines	<p>There are no prescribed time limits to request a MAP under domestic law. Taxpayers must refer to the relevant DTT for the applicable time limits in which to request a MAP.</p> <p>Taxpayers have three years to present a case to SKAT under the EU Arbitration Convention (90/436/EEC).</p>

APPLICATION REQUIREMENTS

Content of application	No specific guidance.
Language	No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS

<p>Interaction with domestic proceedings</p>	<p>It is possible to submit a request for MAP even where there is an ongoing domestic litigation. A case may be put on hold during a MAP, but in some cases the litigation will continue in parallel with MAP negotiations.</p>
<p>Arbitration</p>	<p>As Denmark is a member of the EU, Taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive on October 10, 2017. The Directive is applicable to matters submitted after July 1, 2019, on issues related to the tax year starting on or after January 1, 2018.</p> <p>The EU Arbitration Convention also imposes a binding obligation on EU member states to eliminate double taxation under DTTs including, if necessary, by reference to the opinion of an independent advisory body.</p>

STATISTICS

<p>APA</p>	<p>There were 19 pending APA applications during income year 2015 and eight completed applications. SKAT has had an APA program since 1991. Although APAs are generally available in Danish law and via the MAP provisions in the Danish tax treaty network, Denmark does not have a formal APA program.</p>
<p>MAP</p>	<p>Denmark had a total of 181 active MAP applications as of December 31, 2016. The average time needed to close MAP cases is 37 months for transfer pricing cases, and 38 months for other cases.</p>

Double Taxation Treaty Network

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Argentina	Czech	Israel	Netherlands	Switzerland ^(I)
Australia	Republic ^(IV)	Italy	New Zealand	Taipei
Austria	Egypt	Jamaica	Nordic	Tanzania
Azerbaijan	Estonia	Japan	countries	Thailand
Bangladesh	Faroe Islands	Jersey	Norway	Tunisia
Belgium	Finland	Kenya	Pakistan	Turkey
Bermuda	Georgia	Korea	Philippines	Uganda
Brazil	Germany	(Republic of)	Poland	Ukraine
British Virgin	Ghana	Kuwait ^(IV)	Portugal	United
Islands	Greece	Latvia	Romania	Kingdom
Bulgaria	Guernsey	Lithuania	Russia	United States
Canada	Hong Kong	Luxembourg	Serbia	Venezuela
Cayman	Hungary ^(IV)	Macedonian	Singapore	Vietnam
Islands	Iceland	Malaysia	Slovakia	Zambia
Chile	India	Malta	Slovenia	
China ^(IV)	Indonesia	Mexico	South Africa	
Croatia	Ireland	Montenegro	Sri Lanka	
Cyprus	Isle of Man	Morocco	Sweden	

NOTES

- I denotes treaties with MAP arbitration provisions.
- II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- III denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- IV denotes treaties that became effective within the last five years.
- V denotes treaties that are awaiting ratification.
- VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- VII arbitration is to be conducted under the statutes of the ECJ.
- VIII arbitration is to be conducted under the statutes of the ICJ.

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