



**DOING BUSINESS
IN DENMARK 2011/12**

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Tivoli, Copenhagen

Business can be conducted through companies, by partnerships or by individuals acting as sole traders.

The business of sole traders and partnerships is not distinct from the personal affairs of the proprietor(s). The proprietor has unlimited liability for the debts of his business.

A company – the most common form being a public or private limited company – is a distinct legal entity established to separate its business affairs from the personal affairs of its proprietors.

A company can only cease to exist when it is wound up following legal framework. This means that a company can carry on as long as there are individuals appointed to act on its behalf despite e.g. the death or retirement of an individual.

Investors are free to choose their preferred form of entity. However, permission is required for most non-EU/EEA residents to set up branch operations.

Only the following types of companies are regulated by law:

- Public limited companies (Aktieselskab, abbreviated: A/S).
- Private limited companies (Anpartsselskab, abbreviated: ApS).
- Branches (of foreign limited companies).

As most foreign investors prefer to set up a new business under one of the above types of companies, other ways of establishing a business will not be dealt with here.

However, it is also possible to establish a SE company (European Company) and a SCE (European Cooperative Company) in Denmark.

Public limited companies (Aktieselskaber)

The liability of each shareholder is limited to the amount of shares subscribed (irrespective of fully paid up or not) or alternatively the purchase price of the shares acquired.

A public limited company must have a share capital of a nominal value of at least DKK 500,000. Only 25% or DKK 125,000 of the initial share must be fully paid up before registration. The capital may be obtained by injection in cash or in other assets.

Foreign individuals and companies are allowed to own a Danish company by 100%.

If 50% or more of the share capital is lost, an account of the financial situation and measures to be taken must be given to the shareholders by the management.

The management

The management may consist of either a board of directors (a minimum of 3 persons) and the managing director(s) (a minimum of 1 person), or a board of directors being the managing directors, or a board of managing directors supervised by a supervisory board (a minimum of 3 persons).

The board of directors is elected by the shareholders at the annual general meeting and its primary task is to ascertain a sound organisation and to set out guidelines for the managing director.

If the company employs more than 35 persons, the employees are entitled to be represented on the board of directors or on the supervisory board.

The board of directors appoints the managing director. The managing director's primary task is the day-to-day management of the company.

Statutory publication

The following details of the company must be filed with the Danish Commerce and Companies Agency, where part of the information is publicly available:

- Denomination of the share capital.
- Names and addresses of the founders of the company.
- Names and addresses of the members of the board of directors and the managing director(s).
- Articles of association.
- The annual report which includes names and addresses of shareholders with a voting power of 5% or more.

Further, shareholders holding at least 5% of the capital are registered in a register which is publicly available.

Private limited companies (Anpartsselskaber)

In general, private limited companies are regulated by the same laws as described above for public limited companies.

The main differences are:

- The management may consist of either a board of managing directors or a board of directors being the managing director(s) or a board of directors or managing directors or managing directors supervised by a supervisory board.
- A minimum share capital of DKK 80,000 is required. The initial share capital must be fully paid up before registration.
- A board of directors is not statutory, unless the company employs more than 35 persons. If so, the employees are entitled to be represented on the board of directors or on the supervisory board.
- If the share capital decreases below DKK 62,500, an account of the financial situation and measures

to be taken must be given by the management at a general meeting.

Further, shareholders holding at least 5% of the capital are registered in a register which is publicly available.

Branches (of foreign limited companies)

Foreign limited companies can carry out activities through a branch in Denmark.

A branch must be registered with the Danish Commerce and Companies Agency, and it must be certified that the foreign company is registered in accordance with the legislation of its home country.

A branch in Denmark acts under Danish law. The name of a branch must show its nationality and its status as a branch of a foreign limited company. The branch must be managed by a branch manager.

Each year the annual report of the foreign company must be filed with the Danish Commerce and Companies Agency, where the report is publicly available.

Representation offices

Establishment through a representation office is an option, if the activities are limited to being of an “auxiliary and preparatory nature”. Such activities cannot include any kind of sales activities, nor power to enter into binding contracts on sales on behalf of a non-resident company.

The activities included in the definition of a representation office could be the gathering of information for the foreign company or maintenance of a showroom. However, in case of maintaining a showroom no individual in the representation office can have the authority to enter into contracts.

The foreign company must register the activities of the representation office with the Danish Commerce and Companies Agency and point out a representative in Denmark. The representative must sign a declaration confirming that he or she is the representative of the foreign company.



The board of directors and the managing director are responsible for the maintenance of sound accounting records and for the preparation of annual reports, covering each financial reference period.

The management report prepared by the board of directors and the auditors' report are integrated parts of the annual report.

The annual report must be approved by the shareholders at the company's annual general meeting.

The annual report must be filed with the Danish Commerce and Companies Agency without undue delay after the approval at the general meeting and no later than five months after the end of the financial year. Governmental and listed companies must file the report no later than four months after the end of the financial year.

Form and contents of the annual report

The disclosure requirements and the form and contents of the annual report are set out in the Danish Financial Statements Act. In addition, the annual report

must comply with Danish accounting standards. If a company is listed, the annual report must comply with the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS). Non-listed companies may choose to comply with IAS and IFRS as well.

The Danish Financial Statements Act follows the EU 4th and 7th Directives.

According to the Act a company must prepare an annual report consisting, as a minimum, of:

- A statement by the board of directors and the management on the annual report.
- A balance sheet.
- A profit and loss account.
- Disclosures, including disclosure of accounting policies.
- A statement of changes in equity as well as a management report.
- An auditors' report.

Small and medium-sized companies may be exempt from some of the disclosures.



Audit requirements

All limited companies must be audited by an independent auditor (in certain cases very small companies may be exempted). The auditor is appointed by the shareholders at the general meeting.

During the year the auditor reports to the board of directors. In addition, the auditor provides the shareholders with an auditors' report, which is an integrated part of the annual report.

The auditors' report must state whether the annual report complies with the disclosure requirements of

the Danish Financial Statements Act and whether it gives a "true and fair view" of the company's state of affairs at the balance sheet date as well as of the profit or loss in the financial period.

Auditors must comply with the auditing standards published by the Danish Institute of State Authorised Public Accountants (FSR), which is a member of the International Federation of Accountants (IFAC). Thus, the audit must be performed in accordance with the International Standards on Auditing (ISA).



A foreign investor planning to set up a subsidiary in Denmark may either form a new company or purchase the shares in an existing company, for example a “shelf” company.

Establishment procedures

A memorandum of association must be prepared and signed by the founders. The memorandum of association must contain draft articles of association, including the following information:

- Name of the company.
- Objective of the company.
- Share capital.
- Share capital rights.
- Board of directors.
- Annual general meeting.
- Financial year.

Furthermore, the memorandum of association must provide information such as the names and addresses of the founders, the subscription price of the shares and the deadline for subscription and payment of subscribed capital.

The final decision to found the company may be made at the shareholders' first meeting (statutory if an ApS). If so, the shareholders elect the members of the board of directors and appoint the auditor when the resolution to found the company has been passed.

The board of directors is obliged to register the company with the Danish Commerce and Companies Agency within 2 weeks as from the date of the memorandum of association.

A company in the process of incorporation – e.g. a company which has not yet been registered – is not considered an independent entity. Therefore, the founders are liable for the activities of the company.

Upon registration the company takes over all liabilities, including the liabilities related to activities carried out between the date of founding and the date of registration.

Purchase of shares in a shelf company

In order to save time in connection with the incorporation of a new company, several law firms own registered companies which have not yet carried out any business, i.e. shelf companies.

The acquisition of a shelf company allows investors to set up a business almost at once. Immediately after the acquisition an extraordinary shareholders' meeting must be held in order to vote for the necessary changes to the articles of association, to elect new members for the board of directors, and to appoint the auditor. The articles of association must be changed in respect of the name, the objectives and frequently also the financial year. The changes adopted at the shareholders' meeting must be registered with the Danish Commerce and Companies Agency.

Registered branch office

A registered branch office of a foreign company is entitled to carry out any business activity included in the objectives of the foreign company. The foreign company must register the branch office with the Danish Commerce and Companies Agency and submit the following documents:

- A certification of the legal existence of the foreign company in its home country e.g. a copy of its incorporation certificate.
- Documentation for the person authorised to sign for the foreign company.
- A copy of the articles of association of the foreign company.
- A statement from the relevant foreign authority in question confirming that a Danish company can register a branch in the foreign country (only a requirement of mutuality if the foreign company's home country is outside the EU/EEA).
- A certified power of attorney to a branch manager.

Choice of business form

Commercial considerations should be of overall importance in the investor's choice of business form in which a particular activity should be organised.

However, some of the more essential tax aspects as well as other important factors are briefly listed below.

	Subsidiary	Branch	Representation office
Establishment	+ Can be bought readily incorporated and the shares can be owned irrespective of the nationality of the shareholders.	÷ May not be available to companies resident in certain countries.	+ Only a few formal establishment procedures. ÷ The scope of activities possible is rather limited and it cannot engage in sales activities or conclusion of contracts.
Annual report	+/- Must prepare and file audited annual report.	+/- Must file the audited annual report of the head office.	+ Annual report is not required.
Changes in structure	÷ Additional formal requirements in respect of e.g. changes in capital, capital requirements, winding-up, etc.	+/- Easy to close down, but may result in taxation of capital gains, as assets are considered sold/transferred or if the branch is converted into a subsidiary later on (exception possible for branches of SE companies).	+ Easy to close down.
Liability	+ Liability limited to the subscribed capital.	÷ Head office and branch manager are fully liable for the activities/liabilities of the branch.	÷ Head office is fully liable for the activities/liabilities of the representation office.
Cross border	+ Can be used for cross border activities, e.g. holding company and R&D company.	÷ Cannot be used for cross border activities.	÷ Cannot be used for cross border activities.
Dividends	+ No withholding tax on distribution of profit to corporate 10% shareholders or group company. + Possible to distribute interim dividend if provided for in the Articles of Association.	+ No withholding tax on payments of profits to the head office.	Not applicable – no profit to be distributed.
Transfer pricing	+/- Must comply with transfer pricing regulation similar to OECD guidelines.	+/- Must comply with transfer pricing regulation similar to OECD guidelines.	+ Not taxable in Denmark.

Tax rate

Taxable income – including capital gains – is subject to a corporate tax of 25%. The tax rate is identical for public limited companies, private limited companies and branches.

Company residence and territoriality

Unlimited tax liability

A company is resident in Denmark for tax purposes if it is incorporated in Denmark and has its statutory seat in Denmark. Due to Danish anti-avoidance tax rules however, a Danish incorporated group company may be re-classified as a permanent establishment of a foreign company if considered a transparent entity under foreign tax rules.

Furthermore, a company incorporated outside of Denmark is considered resident in Denmark for tax purposes, if it has its effective management in Denmark. Effective management is determined on the basis of the place of the day-to-day business decision making.

Generally, a company resident in Denmark is no longer subject to corporate tax on its worldwide income and gains.

Limited tax liability

Foreign companies can be subject to limited tax liability either through a branch or a permanent establishment or through withholding taxes on certain types of Danish source income.

Due to Danish anti-avoidance tax rules, a permanent establishment of a foreign group company may be re-classified as a permanent establishment of another foreign group company, if the foreign group company is considered a transparent entity under foreign tax rules.

Permanent establishment

Non-resident companies conducting business in Denmark through a permanent establishment (e.g. a branch) are subject to tax on all income attributable to or received from the establishment.

Copenhagen Opera House



In addition, non-resident companies are subject to tax on income from real property in Denmark.

Non-resident companies are obliged to file a Danish tax return to declare such income.

Danish income subject to withholding tax

Certain types of payments to non-residents are subject to Danish withholding tax, which may be reduced according to a double taxation treaty/an EU Directive.

Dividends

Dividends from Danish companies can be distributed without withholding tax provided that:

- a) the foreign company qualifies as a company under Danish rules *and*
- b) the foreign company directly owns at least 10% or more of the Danish company *and*
- c) the distribution of dividend to the foreign company is protected by either the EU Parent–Subsidiary Directive or by one of Denmark’s double taxation treaties.
or if
 - a) the foreign company qualifies as a company under Danish rules *and*
 - b) the foreign company has decisive influence directly or indirectly (e.g. more than 50% of the votes) in the Danish company *and*
 - c) the foreign company is resident in an EU/EEA member state *and*
 - d) the distribution would be protected either under the EU Directive or the relevant taxation treaty had there been a direct ownership of at least 10%.

Further, the Danish 28% rate is reduced to 15 % under the domestic tax rules if the foreign company holds less than 10% of the Danish company and the tax authorities in the state of the foreign company exchange information with the Danish tax authorities under the relevant taxation treaty or according to an administrative tax assistance agreement. If the receiving company is tax resident outside the EU, the ownership percentage is calculated on an aggregated group company basis.

The exemptions require that the Danish company can certify that the foreign company meets the conditions prior to the payment of the dividend.

If the above requirements are not satisfied, the

The Lure Players and Copenhagen Town Hall



Danish company must withhold tax on the dividend at a rate of 28% (subject to treaty relief). The foreign company can subsequently reclaim the withholding tax from the Danish tax authorities.

Royalties

According to Danish tax law withholding tax must be paid on all royalties for the use – or the right to use – patents, trademarks, designs or models, plans, secret formulas or processes, or information concerning industrial, commercial or scientific processes. Payments for the purchase of underlying intangible assets are generally not subject to withholding tax. However, payments for access to know-how may be deemed subject to withholding tax.

The withholding tax rate is 25% subject to treaty relief.

Royalty payments to a receiving associated company in another EU member state are exempt from Danish withholding tax if the requirements under the EU Interest-Royalty Directive are met.

Royalty payments for the use of any copyright to literary or artistic work are not subject to Danish withholding tax.

Interest

Generally, Denmark does not levy withholding tax on interest payments to non-residents.

Interest payments from a controlled Danish company (more than 50% of share or votes) made to non-resident companies are subject to Danish withholding tax at a rate of 25%.

However, Danish withholding tax does not apply to interest payments on controlled debt to a foreign company protected by either a double taxation treaty or the EU Interest-Royalty Directive and further exemptions with respect hereto are available.

Tax losses

Tax losses incurred in 2002 and later may be carried forward indefinitely. Carry-back of tax losses is not possible.

Certain restrictions exist on the sale of a company with tax losses. The restrictions generally intend to prevent interest income and other passive financial income to be offset by tax losses carried forward if the company has activities at the time of the change of ownership.

The restrictions apply if, at the end of the financial year, more than 50% of the share capital or more than 50% of the votes are owned by shareholders different from the shareholders at the beginning of the previous financial year, in which the tax loss incurred. The restrictions also apply, if the company does not have any financial risks in respect of commercial activities at the time of the change of ownership. The rules do not prevent a tax loss company from changing its activities or type of business.

Special rules apply for group companies (25% holding of shares). A subsidiary's tax loss carry-forward may be restricted if a change of ownership takes place in the parent company.

These rules also apply to transparent group companies as mentioned under "Company residence and territoriality".

The restrictions do not apply to listed companies.

In certain cases a tax loss carry-forward may also be restricted or forfeited in connection with a capital reconstruction.

CFC taxation (taxation of Controlled Financial Companies)

A company is subject to CFC taxation on profits from Danish or foreign subsidiaries in the following situation:

- a) The company is a direct or indirect shareholder in – and has controlling influence (directly or indirectly based on votes, shareholder agreement etc.) in - the foreign or Danish company, *and*
- b) the business of the foreign or Danish company is considered financial (more than 50% of total taxable income consists of taxable financial income), *and*
- c) the financial assets of the company exceed 10% of the total assets of the company.

The consequence of CFC taxation is that the controlling company is taxable of its (average) direct or indirect pro rata share of the total income of the Danish or foreign company, irrespective of the rules in a double taxation treaty, if any.

The rule also applies to foreign permanent establishments of a Danish company, if it would have been comprised by the CFC taxation had it been a company.

Filing a tax return

Corporate tax returns must be filed annually, no later than 6 months after the end of the financial year. The final tax assessment is normally issued ultimo October or primo November.

Payment and collection

Corporate tax is paid on account in two equal instalments, in March and in November. The instalments are due on March 20 and November 20.

The tax paid on account is collected automatically and calculated on the basis of 50% of the average corporate tax paid during the last three years.

Special rules apply for companies which did not pay or were not subject to corporate tax in the previous three years.

Companies may voluntarily pay additional on-account tax. Such payments must be made no later than March 20 and November 20 of the financial year.

Tax audits

Tax audits of companies are not performed on a regular basis. However, the tax authorities perform tax audits on a number of companies and branches every year.

Further, areas targeted for special initiatives are made public annually.

Penalties

A penalty is payable for the late filing of a tax return. An interest of 0.5% per month on overdue corporate tax is charged on the outstanding balance.

Such interest charges and fines are not deductible for tax purposes.

Statute of limitations

The statute of limitations is three years and four months. As to transfer pricing adjustments, the statute of limitations is extended to five years and four months. This is also the case with respect to certain tax exempt restructures.



Amalienborg Castle, Copenhagen

General comments

The taxable income is determined on the basis of the result shown in the statutory annual report adjusted to comply with the prevailing tax provisions.

Tax accounts generally determine costs and income when legally incurred. The accruals principle is acceptable, however, with certain exceptions.

Usually there are adjustments between the profit for accounting purposes and the income for tax purposes. Some of the most common adjustments include non-taxable income, non-deductible expenses, depreciation, provisions for bad debts or obsolescence, and provisions made for guarantee purposes.

The tax provisions listed below are those most commonly applied when determining the taxable income of a company or a registered branch office. There are specific provisions for companies engaged in certain business areas such as banking, insurance, investment funds, and the oil and gas industry. These particular provisions are not dealt with in this publication.

Stock valuation

Stock and work in progress may – for tax purposes – be stated at the market/replacement cost, at cost based on the FIFO principle or at production cost. The base stock and LIFO methods are not accepted. For each group of stock items the company may select one of the three methods of pricing. Slow-moving and obsolete stocks can be depreciated to the net realisable value on an individual item basis or according to guidelines approved by the Danish tax authorities. Provisions for future losses and general provisions are not considered deductible against taxable income.

Costs must include direct costs, e.g. freight, duty, etc. It is possible – but not a requirement – to include overheads.

Dividend income

Dividends received by a Danish company or by a Danish permanent establishment of a foreign company within EU/EEA/a tax treaty country from Danish or foreign companies are tax-free as of day one, if either

- a) the receiving company owns at least 10% of the distributing company, *and*
- b) the distributing company is resident in Denmark or in a taxation treaty country, *and*
- c) the distribution cannot be deducted for tax purposes by the distributing company or any underlying distributing companies without subsequent taxation in a receiving company, *or*
- d) the dividend is covered by the EU Parent-Subsidiary Directive
or if
- a) the receiving company has decisive influence in the distributing company (due to votes, shareholder agreement, etc.) whereby the companies may either be subject to compulsory Danish joint taxation or could participate in a voluntary Danish international joint taxation *and*
- b) the distribution cannot be deducted for tax purposes by the distributing company or any underlying distributing companies without subsequent taxation in a receiving company, *or*
- c) the dividend is covered by the EU Parent-Subsidiary Directive

A transparency rule applies when determining the qualification of the shares.

These rules also apply to dividend-receiving companies considered transparent under the Danish anti-avoidance tax rules mentioned above under “Company residence and territoriality”.

Otherwise, dividends are taxable at the corporate tax rate of 25%.

Capital gains and losses

Capital gains and losses are normally treated as taxable income. Such gains and losses are computed in accordance with specific rules. Taxable net gains are included in the ordinary income of the company for each financial period and are subject to corporate tax at the ordinary tax rate of 25%.

In addition to the taxation of the selected assets described below there is also a highly complex set of

rules applicable to the taxation of gains and losses on financial instruments, such as bonds, securities, forward contracts, futures and options.

These rules are not described here. The overall principle for the general taxation of such areas is the accrual basis.

Shares

Gains

Capital gains on portfolio shares are taxed at the corporate tax rate of 25%. Quoted portfolio shares are subject to taxation on the accrual basis principle (compulsory), whereby increases in value are taxed annually.

Other shares may only be taxed when a gain is realised unless the accruals principle is chosen.

A capital gain on shares in qualifying companies is tax exempt:

- a) at least 10% ownership in a company resident in Denmark or in a taxation treaty country, or where the dividend is covered by the EU Parent-Subsidiary Directive), *or*
- b) shareholding in group companies (decisive influence whereby the companies may either be subject to compulsory Danish joint taxation or could participate in a voluntary Danish international joint taxation).

A transparency rule applies when determining the qualification of the shares.

Losses

If dealing with portfolio shares subject to the accruals principle, losses can be deducted in the company's taxable income. Losses can be carried forward indefinitely.

If instead gains are only taxed when realised, losses can only be offset against such gains. Net losses can be carried forward indefinitely.

If a gain on the shares in a qualifying company is tax exempt due to the qualification of the shares, cf. above, a loss on such shares is not tax deductible.

Real property

Gains

Capital gains from the sale of real property are taxable.

When determining a gain, a five-step procedure must be followed:

1. The purchase price and the sales price of the real property are adjusted to cash values.
2. The total amount of tax depreciation and write-offs during the ownership period is calculated.
3. Tax depreciation is recaptured as the lower of (a) sales price less written-off value and (b) accumulated depreciation.



Hammershus lighthouse, Bornholm

4. Depreciation, losses or write-offs, which have not been recaptured, reduce the purchase price when calculating the taxable gain on the property.
5. The taxable gain is reduced, depending on the period of ownership.

A capital gain is taxed as ordinary income.

However, roll-over relief is available, if a new property is acquired for the use of the business prior to the end of the year following the year of disposal.

Losses

Losses from the sale of real property are only tax-deductible, if the primary object of the company is to trade real property. Yet, losses can be carried forward indefinitely (for losses incurred prior to 2002 there is a five-year limit) to be offset against taxable gains on real property.

If a property is tax-depreciable, the difference between the written down value and the sales price is tax-deductible. However, this loss reduces the purchase price when calculating the capital gain. Please see above.

Machinery and equipment

The proceeds from the sale of machinery and equipment are deducted from the depreciation pool.

The concept of the depreciation pool is described under “Depreciation”. If the depreciation pool becomes negative after the deduction of sales proceeds, this negative amount may be recognised in the same year or deferred to the next year, except if subsequent purchases in that year exceed the negative amount.

Goodwill

Capital gains from the sale of goodwill are tax-liable and losses are tax-deductible. Gains and losses must be restated at cash values. Profits and losses arising from the sale of goodwill are calculated as the difference between the cash value of sales proceeds and the written-down value for tax purposes.

Know-how, patents and trademarks, etc.

Gains and losses relating to the disposal of know-how, patents and trademarks, etc. are taxable.

Gains and losses must be restated at cash values.

Profits and losses arising from the sale of such intangible assets are calculated as the difference between the cash value of sales proceeds and the written-down value for tax purposes.

Gains and losses from exchange adjustments

Gains from exchange adjustments are taxable and losses are deductible. Generally, companies must include gains and losses in the taxable income on an accrual basis unless dealing with receivables between group companies or payments received for goods and services delivered.

Deductions

Business expenses

Generally, expenses are deductible if incurred in order to “obtain, secure and maintain” the income.

Capital expenditure

Generally, capital expenditure is not deductible, except for minor acquisitions at a purchase price of less than DKK 12,300 (2011).

Alternatively, this expenditure can be capitalised and depreciated using the general rules.

Research and development expenses (formation costs)

Research and development costs are no longer tax-deductible or amortisable.

Computer software

The costs of computer software can be fully deducted in the year of acquisition.

Entertainment expenses

Only 25% of entertainment expenses are tax-deductible. The definition of entertainment expenses is very broad and includes gifts to customers and others.

The rules do not apply to expenses related to the employees of the company. Such expenses are fully tax-deductible.

Advertising costs are also fully tax-deductible.

Provisions for bad debts

Recognised losses on accounts receivable are deductible.

Provisions for bad debts are deductible to the extent that the final losses on specified debtors can be substantiated.

Depreciation

Tax depreciation is calculated according to the below rules, irrespective of the method applied for accounting purposes.

Machinery and equipment

Machinery and equipment may include aircrafts, motor vehicles, passenger cars, office machines, and office equipment.

Most machinery and equipment is included in one single depreciation balance and are depreciated as a single asset pool up to 25% a year.

Operating equipment with a long economic life, i.e. certain ships, aircrafts, trains, drilling rigs and other plants within the hydrocarbon area and some utility plants are however depreciated on a separate balance, and the depreciation rate is 21% in 2011, 19% in 2012 and 2013, 17% in 2014 and 2015 and 15% from 2016.

Utility distribution plants, railroad tracks and radio, television and telecommunication distribution plants are depreciated at a maximum rate of 7%.

The depreciation basis at the end of a given year is calculated as follows:

<i>Balance brought forward</i>
<i>÷ Sales proceeds during the year</i>
<i>+ Balance transferred from leasing assets</i>
<i>+ Cost price of the assets acquired during the year</i>
<i>= Basis for calculation of depreciation</i>

Special rules apply to leased machinery and equipment.

Machinery and equipment used for leasing purposes

Machinery and equipment used for leasing purposes cannot be depreciated in the year of acquisition.

Instead, the balance is brought forward to the next year to be depreciated by 50%. In the third year, the balance is transferred to the ordinary balance of machinery and equipment.

Buildings

Buildings can be depreciated on an individual basis using a straight-line method with an annual depreciation rate of 4%.

In general, buildings used for commercial purposes – except office buildings and residential property – are tax-depreciable.

In certain cases an office building attached to a depreciable building may be depreciated.

Under certain conditions artistic adornment may be depreciated according to the same rules as apply to the adorned building.

Expenses for rebuilding and improvement are deductible, if the annual expenses for rebuilding, improvement and maintenance do not exceed 5% of the depreciation basis at the beginning of the year.

Losses on depreciable buildings are deductible, yet losses reduce the taxable purchase price of the building when calculating the capital gain.

Amortisation of intangible assets

Intangible assets are generally amortised over seven years. An annual amortisation, which is not utilised is not forfeited. Amortisation is made on a straight-line basis and is determined on a cash basis. The amortisation principles vary for the different types of intangible assets.

Goodwill

Goodwill acquired in 1998 or later can be amortised over seven years.

Know-how, patents and copyrights

Basically, know-how, patents and copyrights can be amortised over seven years. Specific rules apply, if the protection time of the intangible asset is shorter than seven years. Alternatively, know-how and patents are fully tax-deductible in the year of acquisition according to the owner's own choice.

Leasehold improvements

Leasehold improvements can be amortised over the period of the rental contract. However, the annual amortisation cannot exceed 20%. Specific rules apply, if the period of the rental contract is unknown.

Intercompany transactions

Payments made from Denmark to abroad due to intercompany agreements are normally deductible for tax purposes provided that they are charged on "arm's length" conditions. Expenses charged from a foreign head office to a Danish branch are generally not recognised for tax purposes. Instead, the Danish branch can deduct a proportional amount of the general and administrative expenses of the head office.

Management charges, etc.

Payments of management charges to foreign companies, such as centralised research and development, advertising, IT and other management services, are generally deductible for tax purposes provided that the charges are determined on "arm's length" conditions. Management charges may partly be subject to withholding tax as royalties, if the charges include payments for the right to use technical know-how, etc.

Management charges must be supported by detailed contracts in writing, and the underlying documentation, including the calculation of such charges, must be available to the Danish branch.

Transfer pricing

Danish permanent establishments and Danish companies engaged in transactions with group companies are obliged to report summary information on these

transactions in their tax returns. Furthermore, they are required to prepare and keep written documentation of the prices and terms determined in their transactions. Small companies are subject to reduced transfer pricing obligations.

Intercompany loans

Thin capitalisation rules apply from 1999. Companies will only be affected by the thin capitalisation rules, if the equity makes up less than 20% of the balance sheet amount at the end of the income year and the controlled debt exceeds DKK 10 million.

Third party debt is comprised by the rules, if the third party has received guarantees, etc. (directly or indirectly) from a group company. The non-deductible part of the interest expenses is the part of the controlled debt, which should be converted into equity in

Rosenborg Castle, Copenhagen



order to meet the debt-to-equity rate of 4:1 (a minimum of 20% equity).

The limitation will not apply, if the company can prove that a similar financing can be obtained with an independent party. In that case the solvency ratio in the line of business in question will be taken into consideration.

A loss on intercompany accounts receivable is non-deductible except for documented trading losses and losses due to currency fluctuations.

Interest cap rule

An interest cap rule limits the tax deduction of net financial expenses exceeding DKK 21.3 million (2011). Such expenses are tax deductible only to the extent they exceed a cap calculated on the tax value of the company's assets (calculated according to the rule) multiplied with a standard rate (which is revised annually).

Finally, net financial expenses exceeding DKK 21.3 million (2011) cannot reduce the taxable income before interest and tax (EBIT) by more than 80%. The excess net financial expenses (below the interest cap) are only deductible against future taxable income.

Joint taxation

In general

The principle of joint taxation should not be mixed up with the concept of "filing a consolidated tax return".

Each individual company in a joint taxation must calculate its taxable income or loss on a "stand alone basis". This means that there is no elimination of unrealised profits on intercompany transactions, including sales of fixed assets, etc. For joint taxation purposes the taxable income or losses in foreign subsidiaries are calculated on the basis of the general Danish tax rules.

The taxable income or loss of each company in the joint taxation are then added up to determine the joint taxable income.

The principle of joint taxation allows losses in some companies to be offset against profits in other compa-

nies, and net tax losses carry-forward can be offset against later profits in other companies provided that these companies were all included in the joint taxation at the time of incurring the losses and that the joint taxation has not subsequently been interrupted.

Compulsory Danish joint taxation

Group companies subject to Danish taxation and Danish permanent establishments of foreign group companies and their real property in Denmark are subject to compulsory national joint taxation in Denmark.

Foreign permanent establishments or real property of Danish group companies and foreign subsidiaries are not included in the compulsory joint taxation (unless comprised by a few specific rules on e.g. CFC income). The definition of a "group company" is similar to the definition in the Danish Financial Statements Act and the International Accounting Standards, and reality overrules formalities when determining "decisive influence".

The ultimate Danish parent company generally becomes the management company of the jointly taxed group. If no such Danish parent company exists, but only sister companies, one of the sister companies becomes the management company.

The management company must pay the tax on the joint taxable income to the Danish tax authorities.

Each group company is only liable for its own share of the total tax on the joint taxable income.

After having paid the tax amount to the management company, the management company takes over the liability and the group company is no longer liable.

All jointly taxed companies must have the same financial year as the management company, i.e. in some cases the financial year of a new group company may have to be changed. Alternatively, permission may be granted by the Danish tax authorities to change the financial year of the management company.

If the group has not yet existed for a full financial year, only the income in the period of its existence is

included in the joint taxable income. Consequently, if companies enter or leave the group, income tax returns must be prepared covering the period until the companies enter or leave the group.

Voluntary international joint taxation

A group may choose to enter into voluntary joint taxation with foreign group companies and foreign permanent establishments and/or real property, respectively. The foreign ultimate parent company of the group makes the choice.

If voluntary international joint taxation is opted for, all foreign group companies and permanent establishments and real property must be included in the joint taxation, i.e. foreign entities “below” Denmark (e.g. underlying subsidiaries and their permanent establishments in third countries) as well as foreign entities “above” Denmark (e.g. parent companies and their real property located in third countries).

A single Danish company with e.g. a foreign real property may opt for voluntary international joint taxation with the foreign real property under these rules.

The request for voluntary international joint taxation must be filed with the Danish tax authorities no

later than upon submission of the tax return for the first financial year, where voluntary international joint taxation is requested.

The choice of voluntary international joint taxation involves a binding period of ten years for the ultimate parent company (however, the joint taxation may be interrupted in a few specific cases). The binding period of ten years is not interrupted by the entering or leaving of other group companies.

If the foreign ultimate parent company is not subject to full or limited Danish tax liability, the ultimate Danish parent company is appointed the management company of the group. If no such Danish company exists, but only Danish sister companies, one of the sister companies is appointed.

The ultimate foreign parent company and the Danish management company are jointly and equally liable for the tax share of the joint taxable income relating to the foreign entities, but not for the tax share relating to the Danish entities. Furthermore, the above-mentioned rules concerning financial year, etc. for the compulsory joint taxation also apply to group companies comprised by the voluntary international taxation.



Nyhavn, Copenhagen

Territoriality and residence

Danish tax legislation distinguishes between full tax liability for resident individuals and limited tax liability for non-resident individuals. Citizenship does not affect tax liability.

Residents are taxable on their worldwide income and capital gains. Furthermore, residents are liable to pay gift tax.

There are no wealth taxes in Denmark.

Non-residents are taxed only on income and capital gains deriving from sources in Denmark.

Expatriates with high salaries

Special legislation relates to foreign employees working temporarily in Denmark if they have not been subject to full or limited Danish taxation (on certain incomes) in the previous ten years.

When certain conditions are met, foreign employees may choose to be taxed at a flat rate of 26% of their gross salary income rather than being subject to the general rules of taxation of individuals (see below).

The foreign employees must pay a tax-deductible labour market contribution at a rate of 8% resulting in a total tax of approx. 32 % of the gross salary income.

<i>Labour market contribution</i>	8 %
<i>Tax, 26 % of 92 %,</i>	23.92 %
<i>Total</i>	31.92 %

The foreign employees must work for Danish employers subject to full Danish taxation or for Danish branches or permanent establishments of foreign companies which have a legal representative in Denmark.

The 26% taxation may be chosen for an aggregate period of 60 months.

The employees' averagely monthly salaries in cash and certain fringe benefits must be at least approx. DKK 76,000 (2011) after deduction of labour market contribution (AM bidrag). This minimum salary is adjusted annually.

The tax and the labour market contribution are withheld by the employers as the final settlement of the tax liability.

The salaries taxed at 26% are not declared in the tax returns of the employees.

Expenses incurred in connection with earning the salary cannot be deducted. A tax loss from another income year cannot be offset against income taxed at 26%. However, it can be offset against other income.

General rules for taxation of individuals

Personal allowances

A deduction from income tax is granted as a personal allowance to each individual. The allowance amounts to DKK 42,900 in 2011 (fixed until 2013).

If a married person cannot utilise the total tax value of the allowance, the balance is transferred to the spouse. Special rules apply to married individuals subject to limited tax liability only.

Danish tax computation

Taxable income is based on gross income less deductions. If the tax return covers less than a calendar year, the income is generally annualised in order to reflect the full effect of the graduated system of taxation. The income tax consists of a three-tier state income tax, and a flat rate local income tax.

State income tax

Income and allowances are divided into three categories:

1. Personal income – e.g. cash salary, director's fee, free company car and free telephone – less pension contributions.
2. Capital income, e.g. net interest income and net capital gains.
3. Other allowances deductible from the total taxable income.

A state tax at the rate of 3.64% (2011) is imposed on the total taxable income exceeding DKK 42,900.

Personal income in excess of DKK 389,900 (2011) plus positive net capital income in excess of DKK 40,000 (spouses DKK 80,000) is taxed at a rate of 15%.

Local income tax

Church and local taxes are levied at flat rates. The rates are determined each year by the local authorities and vary for the different municipalities. The tax is levied on taxable income exceeding DKK 42,900. The

St. Nicholas church tower, Copenhagen



average municipal tax rate is 24.9% (2011). The average church tax is 0.73% (2011).

In addition, a health care tax at a flat rate of 8% has replaced the former county tax. The tax is imposed on taxable income exceeding DKK 42,900.

The tax rates for non-residents subject to limited tax liability are identical to the state tax rates for resident individuals together with a fixed local tax rate whereby the tax burden is almost identical to the tax burden of residents.

Deductions

Contributions to Danish social security (labour market pension and labour market contribution) and to Danish pension schemes as well as certain business expenses are deductible from the personal income. However, deduction for payment to Danish pension schemes can only be made up to DKK 100,000 (2011), and the labour market pension is temporarily suspended.

Interest expenses are deductible from capital income.

Certain transport expenses and alimonies are deductible from the taxable income. An earned income relief for expenses for e.g. allowance for extra costs of living, subscriptions to professional associations and necessary business literature is granted, if the total amount exceeds DKK 5,500 (2011) per year.

Furthermore, a deduction of a maximum of DKK 13,600 in 2011 in the taxable income is granted for employed persons.

Tax credits

Individuals are entitled to claim tax credits and/or tax exemption in respect of income deriving from foreign sources.

If an individual, who is resident in Denmark, is assigned abroad for a period of at least six consecutive months, the salary earned abroad is wholly or partly exempt from Danish tax provided that certain conditions are met.

The tax exemption does not depend on the tax amount actually paid in the other state.

Inheritance tax

Inheritance from a deceased person, who was resident in Denmark at the time of his/her death, is subject to inheritance tax divided into 2 categories.

The estate tax is a flat rate of 15% of the value exceeding DKK 264,100 (2011) and is calculated on the basis of the value of the whole estate.

An additional tax of 25% is levied on the value received by recipients, who were not closely related to the deceased. Thus, the total effective tax rate is 36.25%.

Certain amounts are exempted from the tax duty, e.g. inheritance and insurance amounts accruing to the spouse of a deceased person.

Gift tax

Individuals, who are closely related to the donor, can receive gifts without tax, if the cumulative value of all donations for one calendar year does not exceed DKK 58,700 (2011).

A child's or a stepchild's spouse can receive gifts tax-free, if the cumulative value of all donations for one year does not exceed DKK 20,500 (2011).

Gifts to spouses are tax-free.

The gift tax is a flat rate of 15%, and it is only imposed on the above persons, if the cumulative value of the gifts for one year exceeds the tax-free limits.

There is an additional tax on gifts to stepparents and grandparents, if the cumulative value of the gifts exceeds DKK 58,700 (2011) for one year. The additional tax is calculated at a flat rate of 25%, resulting in a total effective tax rate of 36.25%.

Gifts to other relatives or unrelated parties are treated as ordinary income.

Denmark applies the system of value-added tax (VAT) established by the European Union.

Denmark imposes VAT on imports and taxable deliveries of goods and services – unless specially exempted – at a rate of 25%.

A number of business activities are exempted from VAT. The most important ones are: hospital, medical and dental care, insurance, banking, and certain financial activities.

Entrepreneurs supplying taxable goods or services (including branches or agencies of non-Danish companies) must register for VAT.

Refund of Danish VAT is available for foreign companies not registered for VAT in Denmark. A company which is established outside of the EU and carrying out business in Denmark may be required to register for Danish VAT purposes through a resident VAT agent.

The Danish Parliament, Copenhagen



Withholding taxes

Country	Dividend		Royalty	Interest**
	Individuals, companies	Qualifying companies*		
Argentina	10/15% ^{a)}	0%	3/5/10/15%	12%
Armenia	15%	0%	0%	0%
Australia	15%	0%	10%	10%
Austria	0/15% ^{b)}	0%	0%	0%
Bangladesh	10/15% ^{b)}	0%	10%	10%
Belarus	15%	0%	0%	0%
Belgium	0/15% ^{a)}	0%	0%	10%
Brazil	25%	0%	15/25%	15%
Bulgaria	5/15% ^{a)}	0%	0%	0%
Canada	5/15% ^{a)}	0%	0/10%	10%
Chile	5/15% ^{a)}	0%	5/10%	5/15%
China	10%	0%	10%	10%
Croatia	5/10% ^{a)}	0%	10%	5%
Cyprus	10/15% ^{a)}	0%	0%	10%
Czech Republic	15%	0%	5%	0%
Egypt	15/20% ^{a)}	0%	20%	15%
Estonia	5/15% ^{a)}	0%	5/10%	10%
Faroe Island	0/15% ^{c)}	0%	0%	0%
Finland	0/15% ^{c)}	0%	0%	0%
France ^{d)}	N/A	0%	N/A	N/A
Georgia	0/5/10% ^{b), e)}	0%	0%	0%
Germany	5/15% ^{b)}	0%	0%	0%
Greece	18%	0%	5%	8%
Greenland	0/15% ^{a)}	0%	10%	0%
Hungary	5/15% ^{a)}	0%	0%	0%
Iceland	0/15% ^{c)}	0%	0%	0%
India	15/25% ^{a)}	0%	20%	10/15%
Indonesia	10/20% ^{a)}	0%	15%	10%
Ireland	0/15% ^{a)}	0%	0%	0%
Israel	5/15% ^{g)}	0%	10%	25%
Italy	0/15% ^{a)}	0%	5%	10%
Jamaica	10/15% ^{a)}	0%	10%	12.5%
Japan	10/15% ^{a)}	0%	10%	10%
Kenya	20/30% ^{a)}	0%	20%	20%
Korea (rep.)	15%	0%	10/15%	15%
Kyrgyzstan	15%	0%	0%	0%
Latvia	5/15% ^{a)}	0%	5/10%	10%
Lithuania	5/15% ^{a)}	0%	5/10%	0/10%

a) Lower rate at 25% ownership.

b) Lower rate at 10% ownership.

c) Zero rate at 10% ownership.

d) The taxation treaty has been cancelled.

e) Zero rate applies at 50% ownership.

f) Zero rate applies if the EU Parent/subsidiary Directive applies.

g) Lower rate at 50% of the votes.

h) The treaty does not apply to 1929 Luxembourg holding companies.

i) 5% rate if paid to approved entity.

j) Zero rate applies at 80% of the votes.

k) 5% at 70% ownership/investment of 12 million USD.

l) 10% rate between 25% and 70% ownership.

m) Montenegro

n) 10% at 25% of the votes.

Country	Dividend		Royalty	Interest**
	Individuals, companies	Qualifying companies*		
Luxembourg ^{h)}	5/15% ^{a)}	0%	0%	0%
Macedonia	5/15% ^{a)}	0%	10%	0%
Malaysia	0%	0%	10%	25%
Malta	0/15% ^{a)}	0%	0%	0%
Mexico	0/15% ^{a)}	0%	10%	5/15%
Morocco	10/25% ^{a)}	0%	10%	10%
Netherlands	0/15% ^{b)}	0%	0%	0%
New Zealand	15%	0%	10%	10%
Norway	0/15% ^{b)}	0%	0%	0%
Pakistan	15%	0%	12%	15%
The Philippines	10/15% ^{a)}	0%	15%	10%
Poland	0/5/15% ^{a), i)}	0%	5%	5%
Portugal	0/10% ^{f)}	0%	10%	10%
Romania	10/15% ^{a)}	0%	10%	10%
Russia	10%	0%	0%	0%
Serbia	5/15% ^{a)}	0%	10%	10%
Singapore	0/5/10% ^{a), i)}	0%	10%	10%
Slovak Republic	15%	0%	5%	0%
Slovenia	5/15% ^{a), i)}	0%	5%	5%
South Africa	5/15% ^{a)}	0%	0%	0%
Spain ^{d)}	N/A	0%	N/A	N/A
Sri Lanka	15%	0%	10%	10%
Sweden	0/15% ^{b)}	0%	0%	0%
Switzerland	0/15% ^{b)}	0%	0%	0%
Taipei	10%	0%	10%	0/10%
Tanzania	15%	0%	20%	12.5%
Thailand	10%	0%	5/15%	10/15%
Trinidad and Tobago	10/20% ⁿ⁾	0%	15%	15%
Tunisia	15%	0%	15%	12%
Turkey	15/20% ^{a)}	0%	10%	15%
Uganda	10/15% ^{a)}	0%	10%	10%
Ukraine	5/15% ^{a)}	0%	10%	0/10%
United Kingdom	0/15% ^{f)}	0%	0%	0%
United States	0/5/15% ^{j), b)}	0%	0%	0%
Venezuela	5/15% ^{a)}	0%	5/10%	0/5%
Vietnam	5/10/15% ^{k), l)}	0%	5/15%	10%
Yugoslavia ^{m)}	5/15% ^{a)}	0%	10%	0%
Zambia	15%	0%	15%	0/10%

* (According to domestic rules either a 10% direct ownership is required or the distributing company must be a group company. A transparency rule may apply).

** (According to domestic rules withholding tax on interest only applies to interest payments from a controlled Danish company to a foreign company. "Control" is defined as ownership of at least 50% of the share capital or votes. No withholding tax applies if the foreign company is protected by either the EU Interest/Royalty Directive or a double taxation treaty with Denmark (reduction/waiver) or if the foreign company is controlled by a Danish company or by another foreign company in a tax treaty country imposing CFC taxation on the received interest or if the receiving foreign company is taxed thereon with at least 18.75 %).

