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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 90 jurisdictions which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of jurisdictions' legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Denmark as well as practical implementation of that framework. The international standard, which is set out in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners.

2. Denmark has a long history of developing the capacity and international linkages needed to engage in effective exchange of information for tax purposes. It has an extensive network of bilateral agreements that provide for exchange of information in tax matters, currently comprising 23 tax information exchange agreements (TIEAs) and 70 double tax conventions (DTCs). Negotiation of agreements by Denmark is underpinned by a strong co-operation mechanism involving Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden. Denmark is also able to exchange information with other EU member states¹ under the *EU Council Directive*

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1. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Regarding Cyprus – note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”. Note by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

77/799/EEC of 19 December 1977² concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums and under the *Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters*.

3. The 1989 *Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters*, which is currently in force with respect to Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden, contains detailed provisions on the exchange of information for tax purposes including: automatic and spontaneous exchange; simultaneous examinations; service of documents; and presence and participation of representatives from requesting jurisdictions at examinations.

4. Denmark's competent authority, located in the Ministry of Taxation (Skatteministeriet), is sufficiently resourced with highly skilled staff. Due to the extensive information holdings of the Ministry, including its access to Denmark's many registers, nearly half the responses to international requests for information in tax matters are provided by the competent authority without need to exercise information gathering powers. Responses to exchange of information requests are provided to requesting authorities in a timely manner and processes are currently being developed which will ensure that periodic updates are provided by the Danish competent authority to parties which have requested information from Denmark.

5. Denmark's institutional framework supports effective access to and provision of information requested by competent authorities of other countries. Over the last three years there have been no cases where Denmark has not provided information requested by EoI partners due to difficulties in obtaining requested information. Denmark's tax authorities have broad powers to obtain bank, ownership, identity, and accounting information and have measures to compel the production of such information. There are no statutory bank secrecy provisions in place that would restrict effective exchange of information. Application of rights and safeguards (e.g. notification, appeal rights) in Denmark do not restrict the scope of information that the tax authorities can obtain.

6. The main business structures used in Denmark are companies, partnerships and foundations (commercial and non-commercial). Public limited companies in Denmark can issue bearer shares up to the whole capital of the company and only limited mechanisms are in place to identify persons holding bearer shares below a threshold of 5% of the capital or the voting rights. Holding companies, which are a feature of the Danish corporate sector, are

2. This Directive came into force on 23 December 1977 and all EU members were required to transpose it into national legislation by 1 January 1979. It has been amended since that time.

subject to all of the same requirements in terms of registration, submission of tax returns and keeping share registers which apply to other Danish companies. While trusts are not recognised under Danish law, foreign trusts may be administered in or have a trustee in Denmark.

7. A good legal and regulatory framework for the maintenance of ownership and identity information is in place in Denmark. This relies on a mixture of requirements on the legal entities themselves and to maintain certain records and on financial institutions and professions to conduct customer due diligence, along with requirements to submit certain information to government authorities. Similarly, a good framework exists requiring adequate accounting records be kept, including underlying documentation, for a minimum of five years. Comprehensive ownership information may not however be maintained by companies with limited liability, associations with limited liability or co-operatives with limited liability. Financial institutions are required to maintain records of individual transactions and, under anti-money laundering legislation, customer identification records are maintained for 5 years.

8. Overall, Denmark has an excellent system for the exchange of information in tax matters. Its laws are clear and ensure that the appropriate information is available and accessible to the Ministry of Taxation for international information exchange matters. This information can be exchanged with over 100 other countries. Denmark's competent authority is clearly dedicated to performing this role well, to support Denmark's national tax system, to progress international tax matters and to fulfil its international obligations.

Introduction

Information and methodology used for the peer review of Denmark

9. The assessment of the legal and regulatory framework of Denmark and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference*, and was prepared using the *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at early September 2010, other information, explanations and materials supplied by Denmark during the on-site visit that took place on 15-17 June 2010, and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of relevant Danish public agencies, including the Ministry of Taxation, the Commerce and Companies Agency, the Financial Supervisory Authority and the Civil Affairs Agency (see Annex 4).

10. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This combined review assesses Denmark’s legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding Denmark’s legal and regulatory framework that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are also made concerning Denmark’s practical application of each of the essential elements. As outlined in the *Note on Assessment Criteria*, following a jurisdiction’s Phase 2 review, a “rating” will be applied to each of the essential elements to reflect the overall position of a jurisdiction. However this rating will only be published “at such time as

a representative subset of Phase 2 reviews is completed”. This report therefore includes recommendations in respect of Denmark’s legal and regulatory framework and the actual implementation of the essential elements, as well as a determination on the legal and regulatory framework, but it does not include a rating of the elements.

11. The assessment was conducted by a team which comprised two assessors and a representative of the Global Forum Secretariat: Ms Aiko Kimura, National Tax Agency, Japan; Mr Aldo Farrugia, Inland Revenue Department, Malta; and Ms Rachele Boyle of the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange-of-information mechanisms in Denmark.

Overview of Denmark

12. The Kingdom of Denmark is a Scandinavian nation in Northern Europe which is home to just over 5.5 million inhabitants.³ While the Kingdom consists of three autonomous parts: Denmark, the Faroe Islands and Greenland, as the Faroe Islands and Greenland are completely independent with respect to international tax matters (see further below), this review focusses solely on Denmark.

13. While Danish is the country’s only official language, both English and German are widely spoken. Denmark is separated from Norway and Sweden to the north by the North Sea and the Baltic Sea and bordered to the south by Germany. Denmark is divided into five regions and 98 municipalities. The regions were established in 2007, replacing the former county system (comprised of 13 counties), as part of a program of Danish Municipal Reform. Also as part of this reform, 207 municipalities were combined into today’s 98. Unlike in the former county system, the regions are not allowed to levy taxes.

14. Danish Gross Domestic Product (GDP) was slightly over USD 309 billion in 2009.⁴ The services sector makes up 64.7% of GDP while the industrial sector represents 30.7%. Denmark has considerable oil and natural gas resources coming from the North Sea and is a major exporter of crude oil. Important industries include iron, steel, metals, chemical, textiles and clothing. Denmark advocates free trade and neoliberal economic policies. The currency of Denmark is the Danish Kroner (DKK) which is pegged to the Euro (DKK 7.4514792071 = EUR 1 as at 6 August 2010⁵).

3. 2009 figures. Statistics Denmark, *www.dst.dk*.

4. *www.imf.org*.

5. *www.xe.com*.

15. As a country, Denmark is characterised by its strong welfare-oriented profile. It maintains an egalitarian ethos and has one of the lowest levels of social inequality (Gini coefficient 22.5)⁶, with tax-paid education, universal welfare insurance programs and comparatively large social benefits. Surveys have ranked Denmark “the happiest place in the world”, based on standards of health, welfare, and education.⁷ In 2009, Denmark was the second least corrupt country in the world according to the Corruption Perceptions Index.⁸

General information on the legal system and the taxation system

16. The Kingdom of Denmark is a constitutional monarchy. According to the *Constitution*, the monarch is sacrosanct and appoints and dismisses the Prime Minister and other Ministers. The monarch technically holds executive power, but his/her role is strictly ceremonial.

17. The head of the government is the Prime Minister who appoints the cabinet, including a Minister for Taxation. The legislative branch in Denmark consists of a 179-seat unicameral Parliament called the Folketing whose members are directly elected by popular vote to serve four year terms. Of the 179 seats, two members are from Greenland and two are from the Faroe Islands (both of which have self-ruling systems). Bills are presented to the Parliament along with “explanatory notes”, which are recognised as a source of proper interpretation of the law and are used widely by the Danish courts when interpreting the law, and then must pass through the Statsrådet – a privy council headed by the monarch – before being validated by royal assent.

18. The legal tradition in Denmark is neither civil nor common law – it is commonly characterised as a combined Scandinavian-Germanic civil law system. Generally there is codification of the law, but customary law is recognised. Major sources of law in Denmark include the 1953 *Constitution*, acts, executive orders, regulations, precedent, and customary law. Since 1973, Denmark has been a member of the EU and a growing proportion of legislation operative in Denmark originates from the EU, though not legislation concerning direct taxation. Some of these laws apply directly, while others must be implemented in Danish legislation before they can take effect.

19. The *Constitution* Art.3 guarantees judges’ independence. A judge can be removed from office only by order of the Special Court of Indictment and Revision. There is no formal division within the courts and all courts

6. www.oecd.org/statisticsdata/0,2643,en_2649_34637_1_119656_1_1_37419,00.html.

7. www2.le.ac.uk and <http://worlddatabaseofhappiness.eur.nl/>.

8. www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table.

can preside over civil and administrative disputes, criminal justice and constitutional matters. The hierarchy of Danish justice courts begins with the Højesteret (Supreme Court) at the top, followed by 2 Landsretten (high courts) and 24 Byretten (district courts). Denmark also has the Court of Impeachment of the Realm (Rigsretten), which presides over cases brought against ministers, and the Special Court of Final Appeal (Den særlige Klageret), for cases brought against judges and for the retrial of criminal cases. The European Court of Justice may determine whether a Danish law is in accordance with the EU treaty and with other EU legislation.

The tax system

20. For tax purposes, Greenland and the Faroe Islands are regarded as separate jurisdictions. This means that Danish tax legislation does not apply in these autonomous areas. Tax treaties and the 1989 *Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters* are in force between Denmark and these jurisdictions.

21. As a percentage of GDP, Denmark has the highest taxes in the world at 48.3%.⁹ All income from employment/self-employment is levied a labour market contribution of 8% before income tax. Individuals' world-wide income is taxed on a progressive basis, while corporate tax is a flat rate. The value-added tax (VAT) is the highest in the world at 25%. Taxpayers consist of:

- Danish resident individuals are taxable on all income including: (1) personal income; (2) capital income; and (3) income from shares. The income is taxed according to a progressive scale where the highest marginal tax rate for personal income is 56.1%;
- non-resident individuals with income from Danish sources, *e.g.* dividends or royalties and income from employment or a permanent establishment in Denmark;
- companies and foundations registered in or with effective management in Denmark are subject to a corporate tax of 25% of taxable worldwide profit (except income from permanent establishments abroad), whether or not profits are distributed. No Danish franchise tax or net wealth tax are levied on companies or branches in Denmark; and
- non-resident companies and foundations with income from Danish sources, *e.g.* income from a permanent establishment in Denmark or dividend, interest or royalty.

9. www.oecd.org/ctp/revenuestats.

Key Danish legislation relevant to international exchange of tax information

| | |
|---|---|
| <i>Act on Certain Commercial Undertakings</i> (lov om visse erhvervsdrivende virksomheder) | <i>Act on Security Trading</i> (lov om værdipapirhandel) |
| <i>Act on Commercial Foundations</i> (lov om erhvervsdrivende fonde) | <i>Bookkeeping Act</i> (bogføringsloven) |
| <i>Act on the Central Business Register</i> (lov om Det Centrale Virksomhedsregister (CVR)) | <i>Danish Act on Public and Private Limited Companies</i> (Selskabsloven, DCA) |
| <i>Act on Financial Business</i> (lov om finansiell virksomhed) | <i>Tax Assessment Act</i> (Lov om påligningen af indkomstskat til staten (Ligningsloven)) |
| <i>Act on Financial Statements</i> (årsregnskabsloven) | <i>Tax Control Act</i> (Skattekontrolloven) |
| <i>Act on Measures to Prevent Money Laundering and Financing of Terrorism</i> (hvidvaskloven) | |

22. The oldest of Denmark's current network of international tax agreements is the bilateral double taxation convention signed with Israel in 1966. Denmark has a very large network of agreements allowing for exchange of information for tax purposes, encompassing 93 jurisdictions. In addition to its 70 DTCs and 23 TIEAs, Denmark is able to exchange information in tax matters under the *Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters*, the *EU Council Directive 77/799/EEC* of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums, and the *Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters*.

23. The Minister for Taxation has delegated the role of competent authority for international exchange of information for tax matters to the Customs and Tax Administration (Ministry of Taxation Notice 1029/2005). The competent authority in Denmark is therefore the Customs and Tax Administration (CTA) – Skatteministeriet – which is responsible for administration and collection of direct taxation, VAT, and other forms of indirect taxation and customs procedures.

Key authorities and professional bodies relevant to international exchange of tax information

| | |
|---|--|
| Bar and Law Society (BLS) | Ministry of Justice (MJT) |
| Customs and Tax Administration (CTA) | Ministry of Foreign Affairs (MFA) |
| Commerce and Companies Agency (CCA) | Money Laundering Secretariat (financial intelligence unit) |
| Enterprise and Construction Authority (ECA) | State Prosecutor for Serious Economic Crime |
| Financial Supervisory Authority (FSA) | |

24. In 2006, Denmark established the Money Laundering Forum to coordinate and exchange information in order to enhance efforts by the authorities and fulfil international commitments regarding the prevention of money laundering and financing of terrorism.

Overview of the financial sector and relevant professions

25. The Danish financial sector is deep (total assets are close to five times GDP) and sophisticated. Since the deregulation of the 1970–1980s, while it is still prohibited to carry on some financial activities in the same company (for example, commercial banking and insurance activities), it is possible to set up holding companies and inter-company ownership among financial institutions. The two largest banks account for approximately 75% of the total assets of all banks and provide more than 50% of commercial bank lending. The Danish financial sector is characterised by a large number of banks, most of them small banks.

26. Compared to other countries, Denmark has a well-developed and mature insurance industry with 174 insurance companies and 37 pension funds offering a broad range of high-quality insurance and pension products to personal and corporate customers. In 2004, the five largest life insurance companies accounted for 88% of gross premiums. Since 1 January 2000, insurance intermediaries have been regulated by the *Insurance Mediation Act*. The FSA licenses and registers brokers in a public register, which is accessible on the FSA web-site.

27. The securities sector is diverse and comprises a large number of associations as well as securities dealers and brokers, who are covered by the term “investment companies”. Danish investment companies range from small single proprietorships to large companies, with 10 holding licenses to provide services internationally. 959 foreign investment companies have licenses in their home countries to carry out activities in Denmark, 5 of which have established branches in Denmark.

28. There are slightly more than 5 000 lawyers (*advokat*) practicing in Denmark. Lawyers typically engage in legal advisory services and legal representational services before the courts and public authorities and also provide economic and other advisory services in connection with their primary business. All lawyers practicing in Denmark are members of the Danish Bar and Law Society and are subject to its disciplinary functions. In Denmark, notaries do not provide services for clients. There are no other independent legal professionals in Denmark.

The financial sector (2008 figures^a)

| Type | Number |
|--|--------|
| Banks | 138 |
| Mortgage-credit institutions | 8 |
| Insurance companies | 174 |
| Ship financing institution (skibsfinansieringsinstitut) | 1 |
| Company pension funds (firmapensionskasser) | 37 |
| National pension plans ^b | 4 |
| Associations: Investment, special-purpose, approved restricted and hedge | 117 |
| Securities dealers | 45 |
| Investment management companies | 15 |

a. Provided by the Ministry of Taxation, May 2010.

b. Arbejdsmarkedets Tillægspension (ATP), Lønmodtagernes Dyrtidsfond (LD), Arbejdsmarkedets Erhvervssygdomssikring (AES) and Den særlige pensionsopsparing (SP-ordningen).

29. Denmark has nearly 3 000 registered public accountants and 2 000 registered state-authorised public accountants. Only approved accountants are permitted to audit companies' (limited liability) accounts according to the *Act on Financial Statements*. There are also accountants in Denmark who are not registered or licensed. Their work opportunities are limited, for example, they cannot conduct most audit activities.

30. In Denmark, trust and company service providers are not recognised or registered as a separate business area or profession. Lawyers and accountants normally provide these services. According to the *Act on Measures to Prevent Money Laundering and Financing of Terrorism 2009*, providers of trust and company services are registered with and supervised by the CCA.

Recent developments

31. In 2009, the parliament approved the new *Companies Act*, which replaces the *Public Companies Act* and the *Private Companies Act* and changes the current regulation of limited liability companies significantly. The main part of the *Companies Act* entered into force in March 2010 and the remainder will come into effect during 2010 and 2011. The reason for the later commencement is that the remaining parts of the act require customisation of the CCA's IT systems.

32. Tax reforms called “Forårspakke 2.0” were adopted by parliament in May 2009 and will come into force during 2010-2019. The changes aim to reduce the marginal income tax rates for all people actively participating on the labour market.

Compliance with the Standards

A. Availability of Information

Overview

33. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority¹⁰ may not be able to obtain and provide it when requested. This section of the report describes and assesses Denmark's legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework.

34. A good legal and regulatory framework for the maintenance of ownership and identity information is in place in Denmark and Denmark's exchange of information partners report that responses to requests for exchange of ownership information have been satisfactorily delivered. This relies on a mixture of requirements on the legal entities themselves and to maintain certain records and on financial institutions and professions to conduct customer due diligence, along with requirements to submit certain information to government authorities.

35. The main business structures used in Denmark are companies, partnerships and foundations. Holding companies, which are a feature of the Danish corporate sector, are subject to all of the same requirements in terms of registration, submission of tax returns and keeping share registers which apply to other Danish companies. While trusts are not recognised under Danish law, foreign trusts may be administered in or have a trustee in Denmark.

10. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.

36. Information on all businesses is contained in the Central Business Register (Centrale Virksomhedsregister (CVR)) maintained by the Commerce and Companies Agency (CCA). The registration requirements, which don't always involve submission of ownership information, are complemented by obligations to submit information in annual tax returns and obligations to submit information to the Financial Supervisory Authority (FSA) and the Customs and Tax Administration (CTA). These, plus requirements on the entities themselves to maintain records and detailed customer due diligence (CDD) conducted by financial undertakings under the *AML/CFT Act*, mean that ownership and identity information is available to the competent authorities for a significant proportion of the relevant entities. Information may not however be available on the owners of companies, associations and co-operatives with limited liability.

37. Public limited companies in Denmark can issue bearer shares up to the whole capital of the company. The extent of issuance of bearer shares in Denmark is not known. Denmark has not established a custodial arrangement with a recognised custodian or other similar arrangement to immobilize such shares. Some limited mechanisms are in place to identify the persons holding bearer shares, notably if the voting right conferred on the shares reaches 5% of the capital and in advance of the company's general meeting in order to exercise shareholder's rights at the meeting.

38. All entities must maintain a full range of accounting records, including underlying documentation, for a minimum of five years. In addition, financial institutions are required to maintain records of individual transactions for five years and anti-money laundering law requires that customer identification records are maintained for five years.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies (ToR A.1.1)

39. Danish legislation allows for the formation of the following types of companies:

- public limited companies (aktieselskaber, A/S): The structural and organisational requirements of an A/S are outlined in the *Companies Act*. It must have a minimum share capital of DKK 500 000 (EUR 67 050);

- private limited companies (anpartsselskaber, ApS): Incorporation requirements are similar to those provided for an A/S except that the share capital minimum is DKK 80 000 (EUR 10 728) (*Companies Act*);
- companies or associations with limited liability (selskaber og foreninger med begrænset ansvar, SMBA and FMBA): While these companies are subject to the general provisions of the *Act on Certain Commercial Undertakings*, there is no specific regulation of companies and associations with limited liability;
- limited liability co-operatives (andelsselskaber, AMBA): The objects of a limited liability co-operative must be to promote the common interests of the members through business activities and whose profit is either distributed among the members in proportion to their share of the turnover or is undistributed (*Act on Certain Commercial Undertakings*); and
- European Companies (SE): European Companies are regulated by Council Regulation (EEC) No.2157/2001 on *Statute for a European Company and the Danish Act on Administration of the Regulation* which permits the creation and management of companies with a European dimension, free from the territorial application of national company law.

40. A large number of international companies have taken advantage of Danish tax rules related to holding companies (including an exemption from withholding tax on dividends for beneficial owners of 10% or more of the capital where exemption provisions are contained in the relevant double taxation agreement or the EU parent/subsidiary directive).¹¹ Holding companies are not defined in Danish legislation as a separate type of entity, but can be any of the five types of companies noted above. Holding companies are subject to all of the same requirements in terms of registration, submission of tax returns and keeping share registers described below which apply to other Danish companies of each type.

41. In April 2010 there were slightly over 43 500 public limited companies (A/S) and 181 000 private limited companies (ApS) in Denmark. In addition, there were 6 700 businesses subject to the *Act on Certain Commercial Undertakings* (i.e. partnerships, and companies with limited liability

11. On 7 June 2010, the Copenhagen Post reported that at least 500 holding companies have been established in Denmark by Danish and foreign corporations in the past two years. “Offshore Holdings Companies Face Tax Probe” www.cphpost.dk/news/national/88-national/49165-offshore-holding-companies-face-tax-probe.html.

(SMBA), associations with limited liability (FMBA) and co-operatives with limited liability (AMBA)).

42. Companies with limited liability (SMBA) have become an attractive type of business for smaller companies. As at August 2010, there were 1 776 SMBAs in Denmark. They are taxed in the same way as traditional limited liability companies if they are registered in Denmark or have effective place of management in Denmark, but there is no capital requirement. SMBAs have to register with the CCA and are obliged to submit annual accounts or, alternatively, statements of exception, to the CCA.

Ownership information companies held by government authorities

Information reported to the Danish Commerce and Companies Agency (CCA)

43. Information on all businesses is available in the Central Business Register (Centrale Virksomhedsregister (CVR)). The purpose of the CVR is to (*Act on the Central Business Register s.2*):

- contain core data on legal entities that engage in business or are employers, and the production entities associated with them;
- implement clear and unambiguous numbering of the legal entities and associated production entities contained within the registry (the CVR number); and
- make the core data available to public authorities and institutions as well as to private parties.

44. The CVR is operated by the CCA, within the Ministry of Economic and Business Affairs. The CCA works closely with the Ministry of Labour, the Denmark Bureau of Statistics and the CTA to manage the register. This co-ordination is particularly necessary because registration requirements for establishing companies are in several pieces of legislation. The CVR collects and centralises all the data contained in the other registers. The data entered in the CVR is available to the authorities and the public (*Act on the Central Business Register s.17 and s.18*).¹² Government authorities, including the CTA, have extensive access to the information holdings of the CCA, beyond that available to the public.

12. At www.virk.dk/cvr.

Registration requirements managed by the CCA

| | |
|---------------------------------|--|
| Public limited companies | s.40 Companies Act |
| Private limited companies | s.40 Companies Act |
| Limited partnerships on shares | s.40 and s.358 Companies Act |
| Certain commercial undertakings | s.8 Act on Certain Commercial Undertakings |
| Commercial foundations | s.5 Act on Commercial Foundations |

45. The information contained in the CVR comprises, amongst other things (*Act on the Central Business Register* s.10 and s.11); the entity's CVR number, form of business organisation, commencement date and (if relevant) termination date, business name and business address, the number of employees, and the type of business activity and types of sub-activities, if any. No ownership information is thus disclosed via the CVR.

46. The requirements for registration are of a similar nature for all types of companies.¹³ As part of registration, information must be submitted identifying each of the founders (who are likely to be some but not necessarily all of the company's owners), members of the management board, the board of directors, and the Chairman. If the registered information is subject to a change, the company must report the change within 2 weeks.¹⁴ However, limited information regarding the owners of Danish companies is provided as part of registration in the CVR.

47. Foreign companies can have representative offices or branch offices in Denmark. There are no registration requirements for representative offices, however the activities which such offices can carry out are extremely limited (no commercial activities and no issuance of invoices). Denmark is host to approximately 800 registered branches of foreign companies. A branch office can be established in Denmark if the parent company is registered in the EU, EEA, Australia or the USA. If the parent company is not registered in these countries, the branch office may still be established if the parent company sends a statement of reciprocity to the CCA with the registration form.

48. Branches of foreign companies similar to Danish public limited companies (A/S) and private limited companies (ApS) are subject to the requirements of the *Companies Act*, Chapter 19. The establishment of a branch must be registered with the CCA (s.349). Branches of other foreign companies with limited liability must also be registered with the CCA (*Act on Certain Commercial Undertakings* s.8(2)). Basic information about the

13. www.virk.dk.

14. It is possible to register changes online: www.webreg.dk.

parent company, its articles of association, objects, share capital, accounting year and authorised officer(s) must be submitted as part of registration. In addition the CCA must be informed of the name of the branch, its address in Denmark, its objects, and the names and addresses of the persons with power of attorney who can sign for the branch.

49. Information on ownership of the foreign company is not registered with the CCA. However, the *Tax Control Act* s.3A, described below, applies to foreign companies formed under the laws of another jurisdiction, but tax resident in Denmark due to effective management in Denmark.

50. The CCA conducts random checks on the information submitted as part of registration and also verifies details if it has reason to suspect there may be an error. During 2008 and 2009 there were slightly over 1% of registrations which contained inaccurate information. In 2010 (to July), 627 of the 65 152 registrations (less than 1%) contained one or more element of inaccurate data. These very low levels of error derive from the strong compliance culture in Denmark and also from the constructive relationships established by the CCA with the private sector.

Information reported to the Customs and Tax Administration

51. According to the *Tax Control Act* s.3A, A/S, ApS and other limited liability companies whose profit is distributed in proportion to the paid-up capital must in their income tax returns provide information on all legal owners who during the income year own 25% or more of the capital in the company or control 50% or more of the voting rights in the company.

52. While this threshold is very high – allowing for identification of only a small proportion of the most significant shareholders – the calculation of number of shares owned must include all securities belonging to the shareholder's spouse, parents, grandparents, children and grandchildren and their spouses, and securities owned by companies over which these persons has a controlling interest.

Information reported to the Financial Supervisory Authority (FSA)

53. A securities dealer trading on a regulated market is obliged to report the details of all securities transactions to the FSA as soon as possible and no later than by the closing time on the relevant market the day after completion of the transaction. A securities dealer is further obliged to maintain all relevant information about transactions with financial instruments for a minimum of five years after carrying out the transaction (*Act on Security Trading*, s.33). In addition, anyone who holds shares in a publicly-traded company is obliged to notify the FSA, and the company itself, of the details of the shareholding when (s.29(2)):

- the voting right conferred on the shares represents no less than 5% of the share capital's voting rights or their nominal value accounts for no less than 5% of the share capital;
- a change of previously notified holding results in limits at intervals of 5, 10, 15, 20, 25, 50 or 90% and limits of 1/3 or 2/3 of the share capital's voting rights or nominal value being reached or no longer being reached.

54. A direct or indirect purchase of a qualified portion (10% or more of the capital or the voting rights) in a financial undertaking requires prior approval from the FSA (*Act on Financial Business* s.61). "Financial undertakings" are defined as banks, mortgage-credit institutions, investment companies, investment management companies and insurance companies. The same obligation applies to an increase in the qualifying interest which, after the acquisition, results in the interest equalling or exceeding a limit of 20%, 33% or 50% of the share capital or voting rights. Similarly, when a natural or legal person is planning to dispose of a qualifying interest, or reduce a qualifying interest in a financial undertaking, such that the disposal entails that the limit of 20%, 33% or 50% respectively of the company capital or voting rights is no longer achieved, the person is obliged to notify the FSA of this in writing in advance, stating the size of the planned future holding (s.61b).

55. Banks and other financial companies are obliged to annually report ownership information on persons who own a qualified portion of the financial company to the FSA (s.61c(2)). Due to the annual nature of this reporting, particularly where there has been a period of interest in a company, the ownership information held by the FSA can be up to one year out of date.

Companies and associations with limited liability, limited liability co-operatives and European companies

56. Companies or associations with limited liability (SMBA, FMBA) and limited liability co-operatives (AMBA) are obliged to submit information to the CCA when the company is founded. These submissions include information on the founders of the company, but not necessarily all of the owners of the company. This information is used only to decide whether the entity meets the requirement of the relevant legislation, though it is kept by the CCA and could be accessed if needed.

57. Companies with limited liability (SMBAs) which are registered in Denmark or have effective management in Denmark are also required to submit tax returns to the CTA. For some SMBAs,¹⁵ the tax returns must

15. Since a March 2010 amendment to the *Act on Certain Commercial Undertakings*, all new registered S.M.B.A.s are not required to submit ownership information in tax returns.

contain information on those legal owners who during the year owned 25% or more of the share capital or held 50% or more of the voting rights (*Tax Control Act* s.3A). Associations with limited liability (FMBAs) and limited liability co-operatives (AMBAs) which are registered in Denmark or have effective management in Denmark are also required to submit tax returns, however they are not required to submit ownership information (s.3A).

58. The same requirements apply to European Companies (SE) as for public limited companies (A/S) (*Council Regulation on SE*, Article 10).

The new *Companies Act* provisions (not yet in force)

59. Under the new *Companies Act* provisions, companies will also be required to promptly report the changes to shareholdings on the website of the CCA, which will be accessible by the public (s.58). A change to the *Tax Control Act* s.3A will come into force at the same time as the new s.58. Limited liability companies other than public and private companies will be obliged in the income tax return to provide information on owners, who during the income year own 5% or more of capital in the company or control 5% or more of the voting rights in the company. As a result of this change, individual shareholders will no longer in the calculation include securities belonging to the shareholder's family or securities owned by companies of which the family has a controlling interest.

60. It is anticipated that these requirements will come into force in the next two to three years. They will also apply to companies formed under the laws of another jurisdiction, but tax resident in Denmark due to place of effective management in Denmark.

Ownership information held by companies

Publicly-traded companies

61. Anyone who holds shares in a publicly-traded company is obliged to notify the company, and also the FSA, of the details of the shareholding when (*Act on Security Trading* s.29(2)):

- the voting right conferred on the shares represents no less than 5% of the share capital's voting rights or their nominal value accounts for no less than 5% of the share capital;
- a change of previously notified holding results in limits at intervals of 5, 10, 15, 20, 25, 50 or 90% and limits of 1/3 or 2/3 of the share capital's voting rights or nominal value being reached or no longer being reached.

62. Companies must publish such notifications (s.29).

Public and private limited companies

63. Similarly, s.55 of the new *Companies Act* requires anyone holding shares in a public or private company to give notice to the company, within two weeks, informing it of such holding, in exactly the same circumstances as outlined in s.29(2) of the *Act on Security Trading*.

64. Public and private limited companies must keep shareholder registers recording the names of the holders of registered shares (*Companies Act* s.50). The register may be held somewhere other than the company's registered office, including in another EU/EFTA member state (*Companies Act* s.51). If the register is not held at the registered office, this must be specified in the articles of association. The register of shareholders must in any case be open to inspection by public authorities (*Companies Act* s.51(1)).

65. If the registered share changes hands, the new shareholder must within two weeks inform the company and request that his/her/its name is entered in the shareholders register, upon proof of title (s.52(1)). Identity information must include name, address and CPR-number (a 10 digit identification code for individuals) or CVR-number of the shareholder. If an individual does not have a CPR number, the information must include birth date. If the shareholder is a foreign national or a foreign legal person, the notice to the company must be accompanied by other documentation ensuring unambiguous identification of the new shareholder.

66. The purchaser of a registered share cannot exercise his rights as a shareholder until his name is recorded in the shareholder register or he has notified the company of the acquisition and proven the title (s.49); though this does not apply to the right to receive dividend or any other disbursements.

67. Public limited companies must disclose each of these registered shareholders in the annual report, giving the full name, address and, if relevant, the registered office (*Act on Financial Statements*, s.74).¹⁶

Companies and associations with limited liability, limited liability co-operatives and European companies

68. Even though it would be maintained for management of the affairs of the company/association/co-operative, there is no specific obligation for companies or associations with limited liability (SMBA, FMBA) and limited liability co-operatives (AMBA) to maintain ownership and identity information, such as through a register of the owners. While this has not limited any of Denmark's international exchange of information for tax purposes to date, it has the potential to do so at some time.

16. This section will be deleted when s58 of the new *Companies Act* comes into force.

69. The same requirements apply to European Companies (SE) as for public limited companies (A/S) (*Council Regulation on SE*, Article 10).

Ownership information held by directors and officers

70. Directors and members of the management board are not required by law to maintain ownership information beyond that in the register of shareholders, noted above, though in the large majority of cases they would have information on the company's ultimate owners as part of their assignments. There is no requirement that companies have directors or officers resident in Denmark.

Ownership information held by nominees and service providers

71. It is accepted in practice that in Denmark a nominee can hold shares on behalf of a shareholder in a public company. In such cases there is no requirement that the share register note which of the recorded shareholders are nominees. Nor is there a requirement that the share register record who the real owners of the shares are. Danish government authorities are not aware of the amount of nominee activity occurring in the country.

72. The previously mentioned requirements in the *Companies Act* (s.55) and the *Act on Security Trading* (s.29) for anyone who holds shares in a publicly-traded company to notify the company and the FSA of the details of the shareholding when they have 5% of the voting right or 5% of the share capital or there is a change in a previously notified shareholding, apply equally to persons who own shares through nominees.

73. All entities covered by the *Act on Measures to Prevent Money Laundering and Financing of Terrorism (AML/CTF Act)* are supervised by either the FSA (financial institutions), the CCA (non-financial businesses and professions) or the BLS (lawyers) (sections 31, 34 and 34a). Financial entities covered by *AML/CTF Act* annex 1 must register with the FSA in order to carry out their activity (at October 2010, 83 such entities were registered, not including money remitters). Entities that commercially carry out activities involving currency and service providers are required to register with the CCA (s.31).¹⁷ Compliance with this registration requirement is closely supervised and generally good; 38 firms conducting company formation business were ordered to stop their activities during 2008-2009.

74. This registration obligation specifically applies to natural and legal persons who are "Acting as or arranging for another person to act as

17. The requirements for registration with the CCA are described in Order No.1197/200.

a shareholder for a third party, unless this is an undertaking the ownership interests *etc.* of which are traded on a regulated market” and thus applies to all of the businesses and individuals acting on a commercial basis as nominees. The customer due diligence (CDD) requirements under this act are such that the obliged entity must know the identity of his/her clients, including; name, address and ID-number (s.11-s.15).

75. This identification requirement involves establishing the identity of the client and the ultimate beneficial owners of the client. Beneficial owner is defined in s.3, according to the definition included in the third EU Anti-money Laundering Directive.¹⁸ With reference to funds, according to the wording of s.3.4(b), the beneficial owner is the “[p]erson who otherwise exercise control over the management of a company”. Such definition, however, is not considered to be exhaustive. Pursuant to the *AML/CFT Act*, s.12.3og, if the client is an undertaking, then proof of identity includes name, address, business registration number (CVR: if the undertaking does not have a CVR number, similar documentation may be provided). The ownership and control structure of the undertaking must be clarified and the beneficial owners of the undertaking must provide proof of identity.

76. Obligated entities must store CDD and accounting material for no less than five years after the customer relationship has ceased. If the obliged entity ceases business or is dissolved, the last acting management must ensure that this information is stored in accordance with the act. If it is dissolved through the intervention of the bankruptcy court, the bankruptcy court may decide that persons other than the last acting management are to store the accounting material (*AML/CFT Act* s.23). As noted in section B.1 of this report, information held by nominees can be obtained by the CTA by exercise of its powers under s.6 and s.6A of the *Tax Control Act*.

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18. *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.* With respect to companies that Directive defines “beneficial owner” (s.6) to mean “the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted.” It goes on to indicate that “the beneficial owner shall at least include: (a) in the case of corporate entities: (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25% plus one share shall be deemed sufficient to meet his criterion; (ii) the natural person(s) who otherwise exercises control over the management of a legal entity.”

Ownership information held by other persons

77. The *AML/CFT Act* applies to an extensive range of financial undertakings and persons including all types of financial institutions, financial businesses and professionals engaged in providing financial services for clients (s.1). As noted previously with respect to nominees and service providers, these financial undertakings and persons are obliged to conduct CDD which will result in them obtaining and maintaining information on the identity of their clients.

Documentation retention requirements

78. There are no specific time-limits for information kept by government authorities. The CCA keeps all information that is in its possession in electronic form indefinitely. Automatic updates are performed by the CCA of details of the information in their system, *e.g.* changes of address, for all natural and legal persons associated with registered entities (*Companies Act* s.18 and *Act on Certain Commercial Undertakings* s.15d). These updates of the personal information cease 10 years after the person in question ceases to be active in the company. Information kept by the CTA is covered by the *Order on State Accounting*, according to which accounting material, including underlying documentation, must be kept for a minimum of five years. For retention requirement purposes, tax returns are considered accounting material. The practice of the CTA, however, is that tax returns are kept for at least 10 years if the taxpayer is an employee and for at least 20 years if the taxpayer is a company or a self-employed person.

79. Information on large shareholders (more than 5%) which must be disclosed in public limited companies' annual reports (*Act on the Financial Statement* s.74), is considered to be accounting information and this must be kept for five years from the end of the accounting period the records or books concern according to the *Bookeeping Act* s.10, described in Section A.2 of this report.

80. There is no set period of time for which information must be maintained by the companies themselves, *e.g.* the shareholder register. There is no obligation to keep the information if the company is liquidated, unless a service provider (liquidator) is involved in the liquidation. In such cases, the liquidators have an obligation to keep the information for 5 years.

81. Sometimes requests from foreign competent authorities for information in tax matters concerns ownership information related to a company which does not exist anymore and it has been difficult for the Danish competent authority to obtain the information requested. The new system being established under the *Companies Act*, coupled with the fact that the CCA keeps its information indefinitely, means these difficulties are likely to become increasingly infrequent.

Bearer shares (ToR A.1.2)

82. Only Danish public limited companies (A/S) can issue bearer shares, and such shares may be issued up to the whole capital of the company. As at April 2010, there were 43 451 public limited companies (A/S) in Denmark, 43 236 of which were not publicly listed on the stock exchange. The CCA does not have statistics on the extent of use of bearer shares in Denmark.

83. Denmark has not established a custodial arrangement with a recognised custodian or other similar arrangement to immobilise such shares. There is no requirement to keep bearer shareholders' names in share registers; serial numbers are sufficient (*Companies Act* s.54(1)). Some measures are however in place which require identification of persons holding bearer shares. Anyone holding bearer shares is obliged to notify the company of this shareholding if (s.55):

- the voting right conferred on the shares represents no less than 5% of the share capital's voting rights or their nominal value accounts for no less than 5% of the share capital; or
- a change of a holding already notified entails that limits at intervals of 5, 10, 15, 20, 25, 50 or 90% and limits of 1/3 or 2/3 of the share capital's voting rights or nominal value are reached or are no longer reached.

84. In addition, a bearer shareholder has to identify himself one week in advance of the company's general meeting in order to exercise shareholder's rights at the meeting (s.84(1)). A holder of bearer shares has to demonstrate that he has title to dividends though this does not have to be registered in the company's book of owners.

85. While these mechanisms do allow for identification of owners of bearer shares in certain circumstances, they are insufficient, particularly considering the large number of companies which may be issuing bearer shares in Denmark. That said, foreign competent authorities have not reported cases where Denmark has not provided information requested due to difficulties in obtaining information about bearer share holdings.

Partnerships (ToR A.1.3)

86. Denmark has four types of partnerships:

- Partnerships limited by shares (P/S): These may also be called partner companies. A partner company is a limited partnership where one or more of the limited partners in the partnership are public limited companies. The limited partners have contributed capital, which is divided into shares. A partner company must have a minimum capital of DKK 500 000. A P/S is regulated by the *Companies Act*; Chapter 21. The

rules on public limited companies (A/S) apply to P/S with the necessary adjustments.

- Limited partnerships (K/S): In a K/S, one or more members – the general partners – are personally, jointly and severally liable, without limitation, for the debts and obligations of the undertaking, while one or more limited partners have limited liability for the debts and obligations of the undertaking. The K/S is formed by an agreement between the participants, regulated by the general law on contracts. A K/S is covered by parts of the *Act on Certain Commercial Undertakings*. There were 3 328 K/S in Denmark in August 2010.
- General partnerships (I/S): In an I/S, all members are personally, jointly and severally liable, without limitation, for the debts and obligations of the undertaking. The I/S is formed by an agreement between the participants, regulated by the general law on contracts. An I/S is covered by parts of the *Act on Certain Commercial Undertakings*. There were 622 I/S in Denmark in August 2010.
- European economic interest groupings (EEIG): An EEIG is regulated by Council Regulation (EEC) No.2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) and the Danish *Act on Administration of the EEC Regulation introducing European Economic Interest Groupings*. An EEIG must be formed by at least two parties, which do not themselves have limited liability, companies or natural persons, who carry out any industrial, commercial, craft or agricultural activity or who provide professional or other services in the European Economic Community.

Ownership information held by government authorities

87. Partnerships are transparent for income tax purposes; most partnerships do not themselves submit tax returns. Rather, the income from the partnership is included proportionately in each of the partners' tax returns. The tax return forms do not require identification of the other partners involved in the partnership, though the CTA can search its databases of all information related to the individuals' tax returns and thus compile the information related to a partnership. The exception to this is partnerships which have more than 10 partners and some of the partners do not participate actively in the business must submit a tax return on behalf of the partners (*Tax Assessment Act* s.29).

88. All partnerships are registered in the CVR, including partner companies, limited partnerships and general partnerships. For partnerships, the register contains, amongst other information, the name, address, position, and CPR/CVR number of each full-liability partner (*Act on the Central Business*

Register s.11 and *Act on Certain Commercial Undertakings* s.2). This applies in the case of businesses that are in the form of full liability partners, such as limited partnerships (K/S) or general partnerships (I/S).

89. Further, K/S and I/S where all of the general partners/partners are undertakings with limited liability must be registered with the CCA in accordance with the *Act on Certain Commercial Undertakings*, s.2(3). The information that must be made available for registration is similar to the information that companies must report.¹⁹ The information and subsequent changes are registered at the CCA and available to the public. The registration also establishes an obligation for these partnerships to submit their annual reports to the CCA.

90. Changes to the full liability partners for limited partnerships and general partnerships have to be reported to the CCA and registered within 2 weeks. (s.2(3) and s.10(1) of the *Act on Certain Commercial Undertakings*). Information on all partners must also be submitted by a partnership if it needs to register for VAT purposes. There is no ownership information submitted to the CCA on the limited partners in a limited partnership which does not need to register for VAT.

91. European Economic Interest Groupings are obliged to register with the CCA. The registration, amongst other things, includes provision of (*Council Regulation*, articles 5-7) the name, address, legal form and CPR/CVR numbers for each member; and a copy of the partnership agreement/contract/memorandum underpinning the formation of the partnership. Any amendment to the partnership agreement must be notified to the CCA within 2 weeks of the change (*Act on Certain Commercial Undertakings* sections 38-39).

92. Ownership information is submitted to the CTA with respect to foreign partnerships that have a permanent establishment in Denmark, though this may not fully cover all foreign partnerships which: (i) have income, deductions or credits for tax purposes in Denmark; (ii) carry on business in Denmark. Since partnerships do not normally have to submit a tax return (unless there are more than ten partners and some of the partners do not participate actively in the business: *Tax Assessment Act* s.29), each of the partners in a foreign partnership with permanent establishment in Denmark has to specify in their tax returns which income derives from their involvement in the partnership.

19. Obligations on companies to provide information on capital do not apply to partnerships.

Information held by service providers

93. Service providers hold the same information on partnerships as they hold on companies in accordance with the *AML/CFT Act* (see earlier description in section A.1.1). Essentially, a range of financial institutions, financial businesses and professionals involved in providing services for their clients are obliged to conduct CDD and must therefore know the identity of his/her clients, including; name, address and ID-number. Beneficial ownership of the clients is explored as part of CDD.

Information held by the partnership and by partners

94. In the normal course of business information on the partners would be maintained for the management of the affairs of the partnership itself. When founded, limited partnerships must create a memorandum of association which details, amongst other things the names, addresses and CVR numbers, if applicable, of the fully liable partners (*Companies Act* s.360(1)). Other forms of partnerships are not required to maintain information on the partners. There is no obligation for an individual partner, in any type of partnership, to maintain identity information on the partners. There is no requirement to have resident partners.

Document retention requirements

95. While there are no specific time-limits for information kept by government authorities, the CCA keeps the information in its possession indefinitely. Pursuant to the *Order on State Accounting*, the CTA keeps taxpayer information which is considered “accounting information” for five years. As a matter of practice, tax returns are kept for 10 or 20 years, depending on the type of taxpayer.

96. There is no set period of time specified in the *Companies Act*, the *Act on the Central Business Register* or the *Act on Certain Commercial Undertakings* for which information must be maintained by the partnerships themselves. Under the *AML/CFT Act*, obliged entities must store CDD material for no less than five years after the customer relationship has ceased. If the obliged entity ceases business or is dissolved, the last acting management or others, as determined by a bankruptcy court, must ensure that this information is stored in accordance with the act (s.23).

Trusts (ToR A.1.4)

97. Danish law does not include the concept of trust, and trusts cannot be set up under Danish law. Foreign trusts can however operate in Denmark and Danish individuals and legal persons can however act as trustees, administrators or protectors for foreign trusts. A foreign trust operating in Denmark

may need to be registered by the Danish tax authorities for tax or VAT purposes. In such cases the trusts are registered under “other foreign firm” in the CVR (described previously in section A.1.1), a category which includes all types of legal bodies unknown in Danish law. While the laws related to this registration do not clearly specify that information on settlors, trustees and beneficiaries be provided to the CCA, such detail is required as a matter of practice from all trusts registering as “other foreign firm”.

98. Danish trustees are required to register with the CCA (*AML/CFT Act* sections 1 and 31). These requirements for registration are described in Order No.1197/2008 “Notice of filing and registration of money transfer companies, exchange offices and providers of services to companies in the Commerce and Companies Agency Register”.²⁰ Under that act, trustees are obliged as part of registration to provide the CCA with the same information as other persons or entities covered by the act and they must submit details to the CCA within two weeks of a change (s.2 to s.4 of the order).

99. CDD obligations apply under the *AML/CFT Act* to a wide range of businesses and professions, notably including legal or natural persons who carry out specified activities on a commercial basis, including (s.1):

- forming companies;
- acting as or arranging for another person to act as a member of the management of an undertaking, or as partner of a partnership, or a similar position for other companies;
- provides a domicile address or another address, which is similarly suitable as contact address and related services, for an undertaking;
- acting as or arranging for another person to act as a trustee or administrator of a fund or another similar legal arrangement; or
- acting as or arranging for another person to act as a shareholder for a third party which does not have its shares traded on a regulated market.

100. All of the professional persons in Denmark who act as trustees or administrators of foreign trusts fall within these categories. The obliged entities covered by this act must identify customers if they suspect a transaction is associated with financing of terrorism or money laundering (s.11). Where no such suspicion arises, the obliged entities should identify customers who are natural persons by obtaining; name, address, national registration number (CPR number) or similar documentation if the person in question does not have a CPR number (s.12(2)). For legal persons, the obliged entity should obtain; name, address, CVR number (business registration number) or similar

20. As amended by Order No.420/2010.

documentation if the undertaking does not have a CVR number. Reasonable steps need to be taken to ascertain the undertaking's ownership and control structure and the undertaking's beneficial owners must be identified (s.12(3)). The extent of the steps to be taken to obtain proof of identity may be determined by the level of money laundering or terrorist financing risk related to the individual customer or business relation, the product or the transaction (s.12(7)).

Document retention requirements

101. There are no specific time-limits for information kept by government authorities. The CCA keeps the information that is in its possession indefinitely. The CTA keeps most of its taxpayer information for five years. Under the *AML/CFT Act*, obliged entities must store CDD material for no less than five years after the customer relationship has ceased (s.23).

Foundations (ToR A.1.5)

102. There are two types of foundations that can be formed under Danish law: non-commercial foundations (fond); and commercial foundations (erhvervsdrivende fond). Foundations are separate legal entities. There is no complete statutory definition of "foundation", but the foundation must be self-standing entity and it must have:

- one or more objectives;
- its own capital, definitively and irrevocably separated from the founder;²¹ and
- a board that is independent of *e.g.* the founder and beneficiaries.

103. Foundations are governed by separate laws, notably the *Foundations Act* and the *Commercial Foundations Act*. Both kinds of foundations are taxable entities under the *Act on Foundations Taxation*. The Civil Affairs Agency (CAA), in the Ministry of Justice, is the authority responsible for all non-commercial foundations and, as a general rule, the CCA is the authority responsible for all commercial foundations. However, the CAA is also responsible for foundations with mixed purposes, *e.g.* commercial and philanthropic activities which fall within the responsibilities of the Ministry of Justice. The CAA currently supervises around 14 000 non-commercial foundations and 220 commercial (mixed-purpose) foundations.

21. The capital of a commercial foundation must be at least DKK 300 000 (EUR 40 000). Non-commercial foundations must have assets of at least DKK 250 000 (EUR 33 300).

104. Non-commercial foundations cannot have persons who are its founders as its beneficiaries (*Foundation Act* s.31). Non-commercial foundations are obliged to send a copy of the statute underpinning formation of the foundation (which often specifies the foundation's beneficiaries or class of beneficiaries), the by-laws, information on founder(s), accountant(s) of the foundation, and the foundation council to the CAA within 3 months of founding of the foundation (*Foundation Act* sections 6(2), 11(2) and 23(3)). Thereafter, non-commercial foundations are not obliged to submit updates to the CAA, unless so requested. Thus, every year the CAA requests around 1 000 foundations to submit their latest annual report to the CAA for examination (*Foundations Act* s.37(1)).

105. The CAA has the power to ask a foundation for information, including details of its beneficiaries (*Foundation Act* s.37(1)). The CAA reviews the contents of the foundations' annual update reports after a belief is formed that there might be something wrong and in such cases would look into the beneficiaries of the foundation. In addition, there are random checks conducted of a sample set of the annual reports; around 1 000 annual reports each year. If something unusual is found, the CAA uses its powers to request further information from the foundation or its accountant. If it seems there is an error in the financial information, the CAA can issue a request for rectification.

106. All non-commercial foundations are registered with the CTA as taxable entities. As part of this registration, they must send a copy of their founding statute/by-laws to the CTA within three months of commencement. The identity of the founder(s) together with name and address of members of the Council and the accountant must be included in this document. It also specifies the foundation's beneficiaries or class of beneficiaries. Changes to the by-laws and changes in the board in non-commercial foundations must be submitted to the CTA with the tax return (*Foundations Act* sections 6(2) and 11(2)).

107. Information on commercial foundations is available in the CVR (*Commercial Foundations Act* s.6). For a commercial foundation the information which must be submitted to the CCA as part of registration includes (*Order on Registration* s.36):

- name, address, function in the foundation and ID-number of members of the board (the foundation council), the directors, and accountant; and
- the statutes of the foundation, which amongst other information identifies the founder(s) and describes the objects of the foundation.

108. While this involves identification of the members of the foundation board (who are the only classes of persons with authority to represent the foundation) and the founders, the register does not however include details

of the beneficiaries. If special rights or advantages are given to the founder or others, this must be included in the foundation's statutes (*Commercial Foundations Act* s.7(1), no.7). Changes must be reported to the CCA within four weeks (*Act on Commercial Foundations*, s.53(3) and *Order on Registration* s.37).

109. For both commercial and non-commercial foundations, the CTA obtains some information on foundations' beneficiaries on a regular basis. Contributions to beneficiaries are tax deductible if the contribution is for the public good or if the beneficiary is a taxpayer in Denmark (*Foundations Tax Act* s. 4). According to s.7B of the *Tax Control Act*, the board of the foundation must each month submit information on the contributions to each beneficiary made in that month. The Minister for Taxation may according to subsection 5 ease this obligation for the foundations – and has done so. The obligation does not apply if the beneficiary is not taxable in Denmark of the contribution (*Order on Reporting Obligations* s.15). In other words the obligation to report monthly on contributions made only relates to contributions to beneficiaries which are Danish taxpayers. Whoever intentionally or with gross negligence fails to perform a duty imposed on him under s.7B is punishable by a fine (*Tax Control Act* s.14).

110. In addition, all information submitted to the CAA by foundations is forwarded by the CAA to the CTA. Further, in the *Order on Minimum Requirements for Large Businesses* (s.31) and the *Order on Minimum Requirements for Small Businesses* (s.25) there is a requirement for foundations to submit on request information on the size of deductible contributions, along with a reconciliation with the information submitted to CTA under s.7B.

Foreign foundations

111. Foreign foundations formed under the laws of a EU member State may conduct business in Denmark. There is no requirement that they have resident directors or officers. As noted previously in section A.1.1 of this report, all businesses are registered in the CVR, and this includes foreign foundations which register in Denmark for income tax or VAT purposes. The register does not however include information on members of the foundation board or beneficiaries (*Act on the Central Business Register* s.11). Neither the CAA nor the CCA supervises foreign foundations which are operating in Denmark as they are governed by the rules of their home country.

Information held by other persons

112. Service providers must also hold certain information on foundations under the *AML/CFT Act*. As noted previously, a wide range of financial institutions, businesses and professions are required to register with the CCA or the FSA (*AML/CFT Act* s.31 and s.34) and must conduct CDD (s.12). As a

result, comprehensive identification of foundations – including ascertaining their founders, board members and beneficial owners (s.12(3)) – is conducted by the relevant financial institution, business or profession when foundations open accounts or are engaged in other activities. The extent of the proof of identity required for this CDD may vary depending on the money laundering and terrorist financing risk related to the individual customer or business relation, the product or the transaction (s.12(7)).

113. The founders, members of the foundation board and directors are not required by law to maintain information on founders, board members, directors or beneficiaries other than in accordance with the foundation's by-laws or statute, though it can be expected that they maintain such information in order to manage the operations of the foundation. No other persons are required to have information on the identity of the founder(s), members of the foundation board or beneficiaries.

Document retention

114. Information on position, name and address of founders and the management of commercial foundations must at all times appear on the CCA computerised information system (*Act on Commercial Foundations* s.56a). This applies for both active and dissolved foundations. Updates of the related personal information are no longer made 20 years after the person in question ceases to be active in the foundation (*Act on Commercial Foundations* s.56a(2)). Under the *AML/CFT Act*, obliged entities must store CDD and accounting material for no less than five years after the customer relationship has ceased (s.23).

Enforcement provisions to ensure availability of information (ToR A.1.6)

115. *Act on Certain Commercial Undertakings*: Failure by a board of directors, board of management or a corresponding management body fails to comply in due time with the obligations on them under the *Act on Certain Commercial Undertakings*, the CCA may impose daily or weekly fines (s.22). A fine will in all cases be applied to non-compliance with certain obligations under this act, importantly including the obligations to submit certain documents to the CCA as part of registration (s.23). The quantum of the available fines is to be stipulated in regulations supporting the act (s.23(2)), though Danish authorities were not able to identify the range of available fines. The act also specifically refers to criminal penalties available under the *Criminal Code* for non-compliance which amounts to a criminal offence. Under the *Criminal Code*. The CCA does not hold information on the number or size of fines issued.

116. The CCA conducts random checks on the information submitted as part of registration and also verifies details if it has reason to suspect there

may be an error. During 2008 and 2009 there were slightly over 1% of registrations which contained inaccurate information. In 2010 (to July), 627 of the 65 152 registrations (less than 1%) contained one or more element of inaccurate data. These very low levels of error derive from the strong compliance culture in Denmark and also from the constructive relationships established by the CCA with the private sector.

117. *AML/CFT Act*: Intentional or grossly negligent violation of many of the obligations under the *AML/CFT Act*, including registration, CDD and record keeping, is subject to a fine (s.37(1) and s.37(5)). In the event of particularly gross or extensive intentional violations, the penalty may be increased to imprisonment of up to six months (s.37(2)). The quantum of the available fines is to be stipulated in regulations supporting the act (s.37(3)). There are currently no limitations in the size of such fines; in a few cases concerning violation of s.2 (ban on cash transactions), the fine has been set at 25% of the amount exceeding a threshold of DKK 100 000 (EUR 1 348). More severe violations may be sanctioned with imprisonment of up to 6 months.

118. If obliged entities do not provide the CCA or the FSA with the information necessary for the supervision activities conducted by those agencies, the CCA and the FSA may impose daily or weekly fines on the natural or legal person responsible for the non-compliance (s.37(4)). Legal persons may incur criminal liability according to Chapter 5 of the *Criminal Code*. Most cases of serious AML violations are also cases where a violation of the *Criminal Code* has occurred.

119. The FSA closely monitors financial institutions' compliance with the *AML/CFT Act*.

| Type of financial institution | Number of registered institutions | On-site inspections 2007 | On-site inspections 2008 | On-site inspections 2009 |
|--|-----------------------------------|--------------------------|--------------------------|--------------------------|
| Banks, including branches of foreign banks | 136 | 41 | 34 | 34 |
| Mortgage-credit institutions | 8 | 2 | 2 | 0 |
| Investment companies and investment management companies | 60 | 9 | 3 | 17 |
| Life assurance companies and multi-employer occupational pension funds | 102 | 11 | 20 | 16 |
| Insurance brokers – firms | 148 | 0 | 3 | 4 |
| Others | 83 | 0 | 4 | 3 |

120. *Act on the Central Business Register*: Any person who fails to furnish information within a time limit fixed in the act or who intentionally or through gross negligence furnishes false information to the CCA will be punished by a fine (*Act on the Central Business Register* s.22). The quantum of this fine is not set in the act and is not known.

121. *Companies Act*: In absence of a more severe penalty under another act, violations of the *Companies Act* regarding registration, reporting of shareholdings and share registers is punishable by a fine (s.366(1), s.367(1) and *Order on Commencement of the Companies Act* s.51). When a member of the management of a limited liability company or a liquidator or the manager of a foreign limited liability company's branch fails to meet the obligations under this act, the CCA may impose fines that accrue on a daily or weekly basis (s.366(2)). The quantum of these fines is not set down in the act and is not known. Legal persons may incur criminal liability according to Chapter 5 of the *Criminal Code*.

122. *Act on Security Trading* and the *Act on Financial Business*: Both the *Act on Security Trading* (s.92–s.95) and the *Act on Financial Business* (s.373–s.374) grant comprehensive powers to the FSA, and in some circumstances the CCA and the Central Bank, to deal with non-compliance. Depending on the nature and the seriousness of the breach, the FSA may:

- order any natural or legal person who fails to meet obligations to remedy the matter;
- issue fines to any financial undertaking, financial holding company or company;
- issue fines to natural persons who are members of the board of directors, members of the board of management, auditors or employees within the legal person;
- suspend or remove securities from the regulated market; or
- withdraw the license of a legal person.

123. The quantum of the fines is not set down in the act and is not known. The FSA also has the ability to remove senior management in the case of severe non-compliance with AML/CFT obligations (*Act on Financial Business* s.32 and s.34) and the CCA may cancel a registration (s.31). In addition, legal persons may incur criminal liability according to Chapter 5 of the *Criminal Code* and natural persons may be liable to imprisonment for up to 18 months for certain violations of obligations under the *Act on Security Trading* (s.94), increased to a maximum of 4 years if the violation is intentional and of a particularly gross nature. Likewise, persons may be subject to imprisonment of up to four months under the *Act on Financial Business* unless more severe punishment is incurred under other legislation.

124. *Act on Financial Statements*: Any person who fails to maintain or furnish information in accordance with obligations in the *Act on Financial Statements* is punishable by a fine (s.164). The quantum of this fine is not set down in the act and is not known. Legal persons may incur criminal liability according to the regulations in Chapter 5 of the *Criminal Code*.

125. *Bookkeeping Act*: In absence of any other more severe penalty under another act, contraventions of the *Bookkeeping Act* are punishable by a fine (s.16). The quantum of these fines is not set down in the act and is not known. Legal persons may incur criminal liability according to the regulations in Chapter 5 of the *Criminal Code*. If accounting material is not stored as required under the act, and if there is reason to believe that there is a danger of abuse, the person with a duty to keep books may, through conviction of criminal offence, have their right to store accounting material abroad suspended for one to five years from the date of final conviction (s.17).

126. *Foundations Act and Commercial Foundations Act*: Violations of the *Foundations Act* are – unless a more severe penalty exists in another act – punishable by a fine (sections 43 and 44), the available quantum of which is not known. In absence of any other more severe penalty under another act, any contravention of the *Commercial Foundations Act* obligations regarding registration with the CCA or other obligations is punishable by a fine (s.63). When it is the members of the management of a commercial foundation or the director or accountant who fails to meet the obligations under this act, the CCA may impose fines that accrue on a daily or weekly basis (s.64). The quantum of these fines is not set down in the act and is not known. Legal persons may also incur criminal liability according to Chapter 5 of the *Criminal Code*. The *Act on Foundations Taxation* does not directly provide for any specific penalties. Rather, penalties in the *Tax Control Act* apply (see below).

127. *Tax Control Act*: If any person, including a bank, declines to comply with the provisions about automatic reporting of information to the CTA, it may impose a daily fine of at least DKK 1 000 (EUR 135), which is scaled in accordance with the size of the company, until reporting occurs (*Tax Control Act* s.9). The *Tax Control Act*, s.5, provides that if the person submitting a tax return has not done so on time, a tax surcharge of DKK 100 is payable per day following the expiry of the return deadline; however, a maximum of DKK 2 500 (EUR 337) applies. Certain exceptions to this surcharge are provided for. Section 5 also notes that for companies, if a tax return is not present at the time of assessment, the tax assessment will be estimated.

128. Whoever intentionally or with gross negligence fails to provide the CTA with information is punishable by a fine (s.14(2)). Anyone who intends to conduct tax fraud, or with gross negligence gives false or misleading information to the CTA, may be subject to a fine equal to the amount of the fraud. If the amount of the fraud is between DKK 250 000 and DKK 500 000, the

person is also liable to imprisonment for up to 18 months (s.13 and s.14(1)). Particularly serious tax fraud is punishable under the *Criminal Code* s.289 by imprisonment for up to 8 years. Frauds of DKK 500 000 (EUR 67 100) or more usually constitute serious tax fraud. In such cases, the offender is punishable by a fine equal to the amount of the fraud and also to 8 years imprisonment.

129. It may thus be seen that some of the Danish acts contain clear penalty provisions, providing a range of sanctions which may be applied proportionate to the nature of the violation and in a manner which may be dissuasive. This is the case for the *AML/CFT Act*, the *Act on Security Trading*, the *Act on Financial Business* and the *Tax Control Act*. Some other acts contain penalty provisions, though the quantum of the available penalties (usually in the nature of fines) is not known. This is the case for the remaining acts analysed above. Other than the supervisory activities conducted by Denmark's supervisory authority for financial institutions (the FSA) and checks conducted by the central registration authority (CCA), little is known of the implementation of Denmark's enforcement provisions in legislation important for the availability of information.

130. Denmark has a strong compliance culture. Strong mutual trust between Danish policy-makers, civil servants, and citizens is a key characteristic of the country. This likely underpins the rather high compliance rate which authorities say all types of entities demonstrate and thus the limited compliance monitoring and sanctioning activities which occur for a number of the obligations on relevant entities to maintain information. The compliance culture is complemented by the CTA's broad powers to compel the production of information from natural and legal persons (see Section B of this report). The CTA has powers of discovery and inspection, and can compel production from taxpayers and third parties of any document deemed relevant.

Determination and factors underlying recommendations

| Phase 1 Determination | |
|---|--|
| The element is in place, but certain aspects of the legal implementation of the element need improvement. | |
| Factors underlying recommendations | Recommendations |
| Information may not be fully available on the owners of companies with limited liability, associations with limited liability, limited liability co-operatives and limited liability partnerships. | It is recommended that the relevant legal provisions be amended to ensure that information is available on the owners of companies with limited liability, associations with limited liability, limited liability co-operatives and partners in limited liability partnership. |
| There are insufficient mechanisms in place that ensure the availability of information allowing for identification of the owners of bearer shares below a threshold of 5% of the capital or the voting rights in Danish public limited companies. | Denmark should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares. |

| Phase 2 Rating |
|--|
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. |

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1)

Accounting information held by relevant entities

131. Denmark has a strong system in place for ensuring that reliable accounting records are kept by for all relevant entities and arrangements. The *Bookkeeping Act*, the primary legislation related to keeping transaction records and storage of accounting records, applies to all commercial undertakings established in Denmark of any type, notwithstanding ownership or liability, and also to all business activities which are carried out in Denmark by

undertakings which are registered abroad (s.1(1)). The application of this act is very wide, encompassing all relevant entities and arrangements. Notably, it applies to businesses acting as trustees and individuals acting in that capacity if they receive remuneration for this service, and applies to commercial and non-commercial foundations. The CTA may wholly or partly exempt individual undertakings from the obligations in this legislation (s.2(1)), however, no exemptions have been granted to date.

132. For undertakings covered by the *State Accounting Act* (lov om statens regnskabsvæsen m.v.) and the *Order on State Accounting* (bekendtgørelse om statens regnskab m.v.) the accounting rules are very similar to the rules in the *Bookkeeping Act*. The accounting material is defined in the same way as in s.3 of the *Bookkeeping Act* and the retention period is five years from the end of the accounting year. Undertakings covered by the *Act on Municipal Administration* (lov om kommunernes styrelse) and by the *Order on Budget, Accounting and Audit on Municipalities* (bekendtgørelse om kommunernes budget – og regnskabsvæsen, revision mv.) – these are quasi-governmental utilities such as operation of the electricity grid, water supply and refuse collection – are also subject to similar requirements though the retention period is only three years from the end of the accounting year. If the retention period according to other laws is longer, the longer period will prevail. Importantly, all large municipal undertakings, such as those which operate the electricity grid, are nonetheless fully taxable (*Corporate Tax Act*, s.1(1) no.2f) and are covered by the retention period in the *Order on Minimum Requirements for Large Businesses* (five years).

133. All relevant entities and arrangements must register transactions as soon as possible (s.7). The transaction records must as far as possible be in the same sequence as the transactions were carried out and must refer to the associated vouchers. To the extent necessary, transaction records should be reconciled with cash balances and liquid holdings of the business. These records must be kept in such a way that it is possible to correlate relevant transactions to the accounts, statements and presentations of the business (s.8). All transaction records should be documented with vouchers which disclose all the necessary information including the date of the transaction and its amount (s.9).

134. In terms of information on the financial position and financial statements of the undertaking, according to the *Financial Statements Act*, most companies, partnerships and commercial foundations must draw up an annual financial report for each financial year (s.8). The annual financial report must give a true and fair view of the enterprise's assets, liabilities and equity, financial position and results for the year and, if consolidated financial statements have been prepared, the group's assets, liabilities and equity, financial position and results for the year (s.11(1)). A company which

is obliged to prepare an annual financial report must have the report audited by an approved auditor, though smaller companies, may choose not to have their financial report audited (*Financial Statements Act* s.135). After the end of the financial year, a shareholder's general meeting must be held to adopt the annual financial report. Without undue delay after approval, the annual financial report and the auditor's report must be submitted to the CCA. The annual report must be filed with the agency no later than five months after the end of the financial year (s.138).

135. According to the *Act on Foundations* s.22, non-commercial foundations must also draw up an annual report for each financial year and this annual financial report must give a true and fair view of the foundations assets, liabilities and equity, financial position and results for the year. When the annual report has been prepared, it must be signed by all members of the council within 6 months after the end of the financial year. A foundation must have its financial annual report audited by one or more approved auditors (s.23). The annual report must be submitted to the CCA if so requested and must be sent to the CTA. According to s.46, anybody can require a copy of the by-laws and the annual reports and information on the board members from the CTA.

136. In the case of limited and general partnerships, the *Financial Statements Act* also imposes an obligation to draw up an annual report, when all full liability partners of the partnership are companies with limited liability, e.g. public or private companies (s.3(1)). Commonly in Denmark, full liability partners are legal persons, not individuals.

137. Companies covered by the *Act on Certain Commercial Undertakings* – companies, associations and co-operative societies with limited liability (AMBAs, FMBAs and SMBAs) – may with some exceptions decide not to present an annual financial report if the company does not exceed two of the following limits in two consecutive financial years (*Financial Statements Act* s.4):

- a balance sheet total of DKK 7 million (EUR 933 333);
- revenue of DKK 14 million (EUR 1.87 million); and
- an average number of 10 full-time employees in the course of the financial year.

138. Slightly reduced obligations also apply for smaller companies, which must prepare an annual financial report consisting, as a minimum, of a statement by the executive and supervisory boards on the annual report, a balance sheet, an income statement, notes, including disclosure of accounting policies, and a statement of changes in equity, as well as a management's review (s.22).

139. In accordance with the *Financial Statements Act* s.159(1), the CCA, through random sampling, checks a number of annual financial reports and the accompanying auditors' reports, exemption statements, etc. submitted each

year in order to ascertain any obvious violations of provisions of or under that act, the *Bookeeping Act*, the *Companies Act*, the *Act on Certain Commercial Undertakings*, the *Act on Commercial Foundations*, the *Act on State-authorized Public Accountants* and the *Act on Registered Public Accountants*.

Information provided to the CTA

140. The Minister for Taxation has made rules that commercial companies must prepare a fiscal statement as the basis for their tax return (*Tax Control Act* s.3(1)). The Minister for Taxation has also made rules on the retention of the fiscal statements and the accounting records, which are important for determining the taxable income of the enterprise. The rules can be found in *Order on the Minimum Requirements for Larger Businesses* and the *Order on the Minimum Requirements for Smaller Businesses*. A fine may be imposed on anyone who fails to fulfil the obligation to store material in the manner laid down by the Minister for Taxation (s.3(3) and s.17).

141. All companies, including companies and associations with limited liability, which for the income year have a net turnover of more than DKK 100 million, are covered by the *Order on the Minimum Requirements for Larger Businesses*. The company/co-operative must submit a fiscal statement together with the tax return for the company (s.3(1)). The fiscal statement must include an income statement, a balance and a specification of the movements in its equity (s.3(2)). The accounting must be conducted such that all entries can be traced to the tax records (s.4). The tax records must be made such that it can be dissolved in the entries of which they are composed of (s.4). The information must be retained for five years from the expiry of the income year (s.6(1)), except for retail businesses' cash register tape and similar internal documents, which should only be kept in one year from date of signing the financial statements (s.6(2)).

142. Small companies and associations with limited liability (a net turnover of less than DKK 100 million – EUR 1.35 million), are covered by the *Order on the Minimum Requirements for Smaller Businesses*. These companies must if so requested submit fiscal accounts to the CTA within one month of the request (s.6). The fiscal statement and the information contained in the basis for the fiscal statement must be derived from the accounting or specifications relating thereto (s.8(1)). The accounting must be conducted such that all entries can be traced to the tax records (s.8(2)). This information must be retained for five years from the expiry of the relevant tax year (s.10(1)), except for retail businesses' cash register tape and similar internal documents, which should only be kept in one year from date of signing the financial statements (s.10(2)). While the scope and nature of information contained in the "fiscal statements" to be submitted to the CTA is not clear from the legislation, the CTA advises that it receives details which explain transactions, enable the company's financial position to be determined and allow financial statements to be prepared.

143. Co-operatives with limited liability are also covered by the same requirements in *Order on the Minimum Requirements for Smaller Businesses*; unless (*Tax Control Act* s.2) they do not have business income, profits or losses, or, they do not have taxable income and the purpose of the association is exclusively charitable or otherwise for the public good.

144. In addition to the accounting requirement for limited and general partnerships which directly or indirectly have companies as full liability partners (s.3(1) *Financial Statements Act*, mentioned previously), full accounting records are required for all partnerships where at least one of the individual partners has a Danish tax liability.

145. The *Order on the Minimum Requirements for Smaller Businesses* applies to natural persons who are full liability partners and limited liability partners with Danish tax liability where the partnership's net turnover is below a threshold of DKK 25 million (EUR 3.3 million) (s.1, s.2). This order requires the partner to, when so requested by the CTA submit fiscal accounts within one month of the request (s.6). The accounting must be conducted such that all entries can be traced to the tax records (s.8(2)). This information must be retained for five years from the expiry of the relevant tax year (s.10(1)), except for retail businesses' cash register tape and similar internal documents, which should only be kept in one year from date of signing the financial statements (s.10(2)).

146. The *Order on the Minimum Requirements for Larger Businesses* applies to natural persons who are full liability partners and limited liability partners with Danish tax liability where the partnership's net turnover is over the DKK 25 million (EUR 3.3 million) threshold (s.1). The partners must submit fiscal statements themselves, unless they choose to have the partnership do this for them (s.21). The fiscal statement must include an income statement, a balance and a specification of the movements in its equity (s.3(2)). The accounting must be conducted such that all entries can be traced to the tax records (s.4). The tax records must be made such that it can be dissolved in the entries of which they are composed of (s.4). The information must be retained for five years from the expiry of the income year (s.6(1)), except for retail businesses' cash register tape and similar internal documents, which should only be kept in one year from date of signing the financial statements (s.6(2)).

147. As both of these orders underpin the *Tax Control Act*, the sanctions in that act apply to non-compliance. Fines and imprisonment for a term up to 18 months may be imposed (s.13, s.14).

Underlying documentation (ToR A.2.2)

148. The provisions of the *Bookeeping Act*, which sets down obligations with respect to keeping transaction records for all commercial undertakings established in Denmark of any type, apply equally to the underlying documentation related to those transaction records. All undertaking must ensure that all relevant “accounting material” is not destroyed, disposed of or corrupted (s.6(1)). “Accounting material” is defined as including (s.3(1)):

- registrations, including the transaction trail;
- any descriptions of bookkeeping, including agreements on electronic exchange of data;
- any descriptions of systems to store and retrieve stored accounting material;
- vouchers and other documentation;
- other information necessary for the control trail;
- financial statements required pursuant to legislation; and
- any audit book comments.

149. This would clearly cover underlying documentation reflecting details of (i) sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; and (ii) sales and purchases and other transactions.

150. With respect to the assets and liabilities of the undertaking, the *Financial Statements Act* requires most companies, as well as partnerships and commercial foundations to have annual financial reports which give a true and fair view of the enterprise’s assets, liabilities and equity. While there is no clear requirement in that act to ensure that related underlying documentation (e.g. contracts) is kept, if any transaction occurred on the assets in the past five years, the underlying documentation would be available in accordance with the *Bookeeping Act*.

Document retention (ToR A.2.3)

151. The *Bookeeping Act* stipulates that accounting records and books must be kept for five years from the end of the accounting period the records or books concern (s.10). There is one exemption for retailing firms – cash register tape and similar internal records must be kept one year from the date of signing the annual report they concern. If the duty to keep books ceases, the last acting management shall ensure that the accounting material continues to be stored in accordance with the act. If a company is dissolved through the

intervention of the bankruptcy court, the bankruptcy court may decide that persons other than the last acting management are to store the accounting material (s.13).

152. According to s.12, the accounting information must in general be kept in Denmark. The accounting material for the current month and previous month may however be stored in Finland, Iceland, Norway or Sweden, if the person with a duty to keep books:

- ensures the material is stored in accordance with the *Bookeeping Act*;
- can procure the material at all times; and
- stores any descriptions of the systems etc. used and any necessary access codes etc. in Denmark so that public authorities are able to obtain access to the material at all times.

153. Information received from Denmark’s peers noted that in all cases Denmark has been able to provide the requested accounting records.

Determination and factors underlying recommendations

| Phase 1 Determination |
|--|
| The element is in place. |
| Phase 2 Rating |
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. |

A.3. Banking information

| |
|--|
| Banking information should be available for all account-holders. |
|--|

Record-keeping requirements (ToR A.3.1)

154. The CTA has a significant holding of information in its databases, including information on financial institutions’ account holders and interest payments. The CTA receives automatic reporting from financial institutions of:

- identification and transaction details concerning pension schemes (*Tax Control Act* s.8F);
- details of interest accrued or paid, from financial institutions and others who receive contributions accruing interest (s.8H);

- account holders’ identities, from financial institutions and others operating accounts (s.8J);
- details of interest accrued and identification information on borrowers, from anyone who as part of his/her business provides or arranges loans with interest (s.8P and s.8R);
- details of interest accrued and identification information on customers, from financial institutions, finance companies, brokers, bankers, lawyers and others who, as part of their profession, receive mortgages in storage management (s.8Q and s.8R); and
- details of interest accrued and identification of beneficial owners of customers who are not fully taxable but who receive credit or income from savings in Denmark or other countries, from financial institutions, finance companies, mortgage companies, securities exchanges, lawyers and others (s.8X).

155. The *AML/CFT Act 2009* s.12(1) requires that financial institutions and a wide range of additional financial businesses and professions have knowledge of their customers. If the customer is a natural person, the required identification data includes name, address, CPR number or similar documentation if the person does not have a CPR number (s.12(2)). If the customer is a legal person, the identity data includes name, address, CVR number or similar documentation if the undertaking does not have a CVR number. Reasonable steps must be taken to ascertain the ownership and control structure and the customer’s beneficial owners (s.12(3)). Information is to be obtained about each customer’s objective regarding the business relationship and the intended extent hereof (s.12(4)).

156. The act requires that the undertakings and persons covered by the *AML/CFT Act* store identity information for no less than five years after the customer relationship has ceased (s.23(1)). Further, documents and records concerning transactions must be stored so that they can be located together for at least five years after the performance of the transactions (s.23(2)). The period of five years corresponds to the normal time for storage of accounting information pursuant to the requirements of the *Bookeeping Act*.

157. The *AML/CFT Act* also requires these obliged entities to pay special attention to complex or unusually large transactions. In this case the institution is required to investigate the purpose of such transactions and obliged to keep records of “such investigations” (s.6(2)). Records and documents on transactions (including documentation on the investigations carried out with regard to complex and unusual transactions) must be stored “so that they can be located together”. This requirement was introduced to expedite the provision of information to competent authorities, and, according to the

explanatory notes, aims to make it possible to match transactions with customer identification data.

158. If the financial institution or other obliged entity ceases activities, the last acting management must ensure the identity and transaction information continues to be stored for at least five years. If it is dissolved through the intervention of the bankruptcy court, the bankruptcy court may decide that persons other than the last acting management are to store the information (s.23(3)).

159. Also, according to the *Payment Services Act 2009*, which applies to banks, payment institutions, electronic money institutions, the central bank and public authorities, the payer and the payee must be provided with all information connected to the transaction (s.45 and s.46). Nevertheless, the financial institutions have no obligation to store the information according to the act.

160. Finally, under EU law, Article 3 of *Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments*, as amended (the EU Savings Directive) requires that financial institutions which pay interest to their customers hold information on account holders that are not resident in Denmark but are resident in other EU Member States.

161. The FSA is responsible for AML/CFT supervision of financial institutions and conducts comprehensive inspections of institutions which include an AML/CFT component. The CCA is responsible for supervision of financial businesses and professions and conducts specific AML/CFT inspections of these entities.²² In 2009, the FSA inspected 74 of the 537 institutions it supervises (nearly 14%) and the CCA conducted AML/CFT inspections of 235 of the 13 000 businesses and professionals it supervises (nearly 2%). In April 2008 the FSA introduced a comprehensive self-assessment scheme, which includes a self-assessment questionnaire related to AML/CTF obligations. The questionnaire is sent to institutions for completion prior to inspections.

162. Compliance by the full range of obliged entities with their AML/CFT obligations is high. Neither the FSA nor the CCA has identified serious non-compliance with the obligations under the *AML/CFT Act* which relate to keeping transaction records and CDD. No fines or imprisonment have been levied. The authorities have identified minor errors and non-compliance and have issued written orders for rectification to 171 institutions and 33 financial businesses/professions over 2007-2009.

22. In addition, the Danish Bar and Law Society (DBLS) has since 2009 supervised law firms' compliance with the AML/CFT obligations.

163. While in a very limited number of cases there has been a delay in obtaining information from the financial institution in question, commonly this is completed within a few weeks. Financial institutions have never refused to provide the competent authority with banking information.

Determination and factors underlying recommendations

| Phase 1 Determination |
|---------------------------------|
| The element is in place. |

| Phase 2 Rating |
|--|
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. |

B. Access to Information

Overview

164. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Denmark's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information, and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

165. The Danish tax authority has significant information holdings, including both the annual information submitted by taxpayers and information received through automatic reporting, as well as direct access to the registers maintained by the CCA. As a result, many EoI requests are responded to directly by the competent authority without recourse to the CTA's powers to obtain information.

166. Denmark's tax authorities have broad powers to obtain bank, ownership, identity, and accounting information and have measures to compel the production of such information. The ability of Denmark's tax authorities to obtain information for exchange of information purposes is derived from its general access powers under the *Tax Control Act* coupled with the authority provided by the relevant exchange of information agreements.

167. There are no statutory bank secrecy provisions in place that would restrict effective exchange of information. Application of rights and safeguards (e.g. notification, appeal rights) in Denmark do not restrict the scope of information that the tax authorities can obtain.

168. Denmark's institutional framework supports effective access to and provision of information requested by competent authorities of other

countries. Over the last three years there have been no cases where Denmark has not provided information requested by EoI partners due to difficulties in obtaining requested information.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

169. As noted previously in section A.3 of this report, the CTA has a significant holding of information in its databases. In addition to the annual information submitted by taxpayers, it receives automatic reporting of information on financial institutions' accountholders and interest payments to account holders. The CTA also has direct access to the registers maintained by the CCA, importantly including the CVR (see section A.1 of this report previously). Most of the information contained in the CTA databases is only available for five years. Information in the CVR is kept in electronic form indefinitely.

170. All of this information in the possession of the CTA may be provided to a requesting competent authority without need to use any information gathering powers. The competent authority estimates that almost 50% of EoI requests are answered directly by the competent authority on the basis of information already held by the CTA and/or requests for bank information sent to financial institutions by the competent authority. Where the information needed is already in the hands of the tax authorities, the competent authority responds within a few weeks.

Powers to obtain information

171. The CTA has wide-ranging powers under the *Tax Control Act* to make enquiries and inspect documents. It does not need to involve the powers of other government authorities in order to answer EoI requests except in extreme cases where the Police are required to execute a search and seizure order.

172. Where the information is in the possession or control of the taxpayer/person/entity that is the subject of the enquiry, the request is forwarded from

the Danish competent authority to the local tax centre where the tax payer is registered, and an assessor exercises the powers under the *Tax Control Act* which are described below in order to collect the information. Where the information is in the possession or control of a third party such as a service provider or financial institution, it might be the competent authority or an assessor at the relevant local tax centre who exercises these powers to gather the information, depending on the nature of the third party (e.g if the service provider is a Danish taxpayer) and the nature of the requested information. Where necessary the competent authority itself will ask the CCA or other government authorities for further information they hold.

173. After receipt of information gathered by an assessor in response to an EoI request, the competent authority conducts a quick evaluation of the information to ensure the response is complete and adequate before sending it to the requesting authority.

174. The CTA's powers include the ability to request information, most importantly from:

- any legal or natural person who has accounts (or a third party holding relevant documents): his/her accounting records and supporting documents for the current or previous financial years and also any other documents which may affect the tax assessment (s.6); and
- any person with any obligation to report information to the CTA, regardless of whether these records are in paper or electronic form (s.6A).

175. The general provision (s.8D) establishes an obligation on all public authorities and all boards of directors or similar senior management of private legal persons to on request provide the CTA with such data which has been deemed essential for tax management. The term “tax management” is taken to indicate all matters relevant under taxation legislation. It is supplemented by s.8C, establishing a general obligation on anyone operating in an independent profession to provide information on the turnover he has had with other named persons, and by s.8G, a more specific provision applying to brokers, lawyers and other personal operators who as part of their enterprise manage funds or lend money and stating precisely what information must be submitted on request.

176. There are no limitations on the ability to obtain bank information. The general provision described above (s.8D) is used to obtain information from financial institutions. To facilitate a request under the *Tax Control Act*, the competent authority includes in its request (where available) the name, address and date of birth of the account holder; the TIN or CVR/SE-number for legal persons; and/or the account number. For very common names, it might be necessary to provide additional details to identify the account holder. While the competent authority has from time to time experienced

some small delays in obtaining information from banks, financial institutions have always complied with their obligation to provide the CTA with requested information.

177. According to all three provisions – s.8C, s.8D and s.8G – it is also possible for the CTA to obtain information about unidentified customers and unidentified account holders; but only with prior consent from the Tax Council (*Tax Administration Act* s.2 and s.3). Obtaining such consent constitutes a special procedure and can take some time as the Tax Council meets once a month.

178. Additional very specific obligations applicable for certain types of entities to provide requested information can be found in the *Tax Control Act*, s.6-s.8. Notably, third parties may be requested to submit accounting information and related documents (s.6(3)).

179. In a small number of cases requests received from an EoI partners have sought historical details which can be difficult to obtain as under Danish law companies, entities and others obliged to report to the tax administration, are only obliged to keep information for five years (*Bookkeeping Act* s.10). The CCA keeps information submitted to it in electronic form indefinitely, though as noted in section A.1 of this report, that does not cover the full range of ownership and identity information. With respect to financial information, the CTA keeps records for five years.

180. The CTA also has the power to inspect documents (without need for external authorisation, e.g. from a court) after due notification, at all work places, including related vehicles, to review accounting records, supporting documents and any other documents which may affect the tax assessment, regardless of whether these records are in paper or electronic form (*Tax Control Act* s.6(4)). These provisions specifically provide that the owner and the employees, if any, at these premises must provide the CTA the necessary guidance and help for their inspections. The CTA does not have the power to, without authorisation from a court, inspect documents at private residences.

181. Search and seizure (against the will of the persons concerned) may be enforced only by the police, at the request of the CTA, in accordance with a judicial procedure (s.6, s.6A and s.22). This is rarely required.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

182. Denmark has no domestic tax interest with respect to its information gathering powers. The CTA can exercise all of its information gathering powers in response to an EoI request.

183. Section 8Y of the *Tax Control Act* specifically provides that all powers which may be exercised by the CTA for domestic tax assessment purposes

(outlined above) may also be used for the purpose of providing a foreign competent authority with information, providing that the request for information was made in accordance with a double taxation agreement, another international treaty or convention, or an administrative agreement on administrative assistance in tax matters.

Compulsory powers (ToR B.1.4)

184. Over the last three years there have not been any cases in which Denmark has not provided information requested by EoI partners due to refusal of persons to provide information to the tax authority. This is due both to the strong compliance culture in Denmark and also to the wide-ranging powers of the CTA to obtain information.

185. As previously described, the CTA has broad powers to compel the production of information from natural and legal persons. The CTA has powers of discovery and inspection, and can compel production from taxpayers and third parties of any document deemed relevant. They do not however have the power to compel testimony from taxpayers or third parties.

186. The tax administration can also, if needed, obtain authorisation from a court to gain admittance to the premises of the person who keeps the information and audit the material (*Tax Control Act* s.6(4) and s.6A). The assistance of the Police can be sought in order to search and seize property, for example when a person refuses to comply with a request for information.

187. If any person, including a financial institution, declines to comply with the provisions of the *Tax Control Act* relating to provision of information, they can be subject to a daily fine by the Danish Ministry of Taxation until the requested information is submitted (s.9). The quantum of this fine is not specified. In serious cases, criminal offences exist for natural and legal persons, including for:

- delivering false or misleading information, intending to evade the public revenue (s.13);
- intentionally or with gross negligence failing to comply with automatic reporting obligations (s.13A);
- intentionally or with gross negligence gives false or misleading information for use in checking the tax assessment and tax calculation (s.14);
- fails to file a tax return (s.15); and
- fails to store information in the manner required by the Minister for Taxation (s.17).

Secrecy provisions (ToR B.1.5)

188. Sections 8C, 8D and 8G of the *Tax Control Act* establish a general obligation on all public authorities and all board of directors or similar senior management of private legal persons to provide the CTA with such data as deemed essential for tax management. The CTA can also obtain information about unknown customers, account holders *etc* with the prior approval of the Tax Council. The CTA can impose daily fines for non-compliance with these provisions.

189. There are no secrecy provisions regarding ownership, identity or accounting information which limit the competent authority's ability to respond to an EoI request. Access to the full range of information can be gained for the purposes of EoI requests as described above. As a result, the Danish competent authority has never declined to provide information requested due to secrecy provisions.

190. Various confidentiality provisions exist in Danish law, including:

- the *Financial Business Act* (FiL) s.117(1) provides that all persons connected to a financial undertaking may not divulge or use confidential information obtained during the performance of their duties;
- persons who receive confidential information are covered by the same duty of confidentiality described above (s.117(2));
- information of a purely private nature cannot be divulged without the customer's consent unless such an action is lawful under s.117(1) or s.118(2), *e.g.* in connection to a lawsuit or a merger (s.119); and
- legal professional privilege in Denmark attaches to information and documentation in the possession of a lawyer (an advokat) which relate to the provision of legal advice and/or to proceedings in court. This privilege does not attach to information related to financial or other business matters which the lawyer might be involved in or assisting a client with *Code of Procedure* s.170).

191. Accountants/auditors and other professional groups do not have privileged relationships with clients under Danish law (*e.g.* akin to legal professional privilege).

192. Divulging or exploitation of confidential information can occur despite such confidentiality provisions in certain situations, notably including: (1) divulging of information to the FSA pursuant to the FiL; and (2) divulging of information to the CTA pursuant to *Tax Control Act*. In these situations, confidentiality provisions do not apply if the information is necessary for the relevant government authority to performance their roles in accordance with their legislation (FiL s.118(1)).

193. There are no limitations on the ability to obtain bank information. The general provision described above (s.8D) is used by the CTA to obtain information from financial institutions.

Determination and factors underlying recommendations

| Phase 1 Determination |
|--------------------------|
| The element is in place. |

| Phase 2 Rating |
|---|
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. |

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information (ToR B.2.1)

194. Under Danish law, the CTA is not obliged to inform the person(s) concerned of the existence of an exchange of information request. Likewise, they are not obliged to inform the taxpayer(s) concerned prior to contacting third parties to obtain information.

195. When information requested by the EoI partner is not already in the possession of the CTA and the taxpayer or third party must therefore be approached for information, usually the auditor managing the inquiry notes that the information is sought for an international request for information. No further details of the EoI request are provided. Where so asked by the requesting competent authority, the CTA may simply note that the information is needed in accordance with the *Tax Control Act*.

196. Persons wishing to complain about a decision made by the CTA may do so to the Tax Tribunal of the local tax authority that made the decision. Complaints can also be brought directly to the National Tax Tribunal (NTT). Appeals of decisions made by local tribunals can also be lodged with the NTT. The Danish NTT is the supreme administrative appeal authority for cases involving taxation, VAT, duties, customs duty and property valuation. The work of the NTT is primarily governed by the *Tax Administration Act* as well as the rules of procedure for the Tribunal. The appeals process has clear

timelimits for all stages. Appeals to the Tax Tribunals must be sent no later than one month after the decision of the CTA being appealed. The tribunal must then hear the appeal within three months of receipt of the complaint. Appeals of decisions made by the NTT can be lodged either with a District Court or a High Court, depending on the size or the importance of the case. Appeals of High Court decisions may in turn be lodged with the Supreme Court; and appeals of District Court decisions may be lodged with a High Court. Court decisions may only be appealed freely to one higher instance of court. Appeals of appeal decisions made by a High Court may be lodged with the Supreme Court of Denmark only by special permission.

197. These appeal rights equally apply to CTA matters which involve international exchange of information, though to date this has rarely occurred. As the taxpayer is not normally informed of the existence of an international request for information, these appeals concern the question of whether the taxpayer or the third party was obliged to supply the CTA with the requested information under Danish domestic rules. This, coupled with the clear time limits for all stages in the appeal process, ensures that the appeal rights of taxpayers are compatible with the effective exchange of information.

Determination and factors underlying recommendations

| Phase 1 Determination |
|---------------------------------|
| The element is in place. |

| Phase 2 Rating |
|--|
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. |

C. Exchanging Information

Overview

198. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies on having both adequate mechanisms in place and an adequate institutional framework. This section of the report assesses Denmark's network of EoI agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

199. Denmark has an extensive network of bilateral agreements that provide for exchange of information in tax matters, currently comprising 23 tax information exchange agreements (TIEAs) and 70 double tax conventions (DTCs). Sixteen of Denmark's TIEAs are not yet in force as they are awaiting ratification by the partner jurisdictions, five new Protocols to treaties are waiting for ratification by the partner jurisdiction (Belgium, Luxembourg and Singapore) or are awaiting ratification by both partners (Poland and Switzerland). In addition, the new DTC with Kuwait is not yet in force, nor is the new DTC with Israel, though the original DTC between Denmark and Israel remains in force. The large majority of these agreements meet the international standards.

200. Denmark's bilateral information exchange agreements cover its major trading partners as well as many of the major financial centres and most Global Forum, EU and OECD member jurisdictions. Denmark has not refused to enter into an exchange of information agreement with any Global Forum member. As Denmark has established agreements with its most important partners, most new agreements result from requests received from other jurisdictions seeking an agreement. These negotiations are prioritised according to the order in which the jurisdictions approached Denmark. In addition, Denmark is currently undertaking a program of updating its older agreements by establishing Protocols to bring the exchange of information articles to the international standard.

201. Negotiation of agreements by Denmark is underpinned by a strong co-operation mechanism involving Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden. Whilst agreements are signed bilaterally, TIEAs are negotiated jointly and there is a co-ordinated approach to negotiation of tax treaties. Denmark is able to exchange information with other EU member states²³ under the *EU Council Directive 77/799/EEC* of 19 December 1977²⁴ concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums. Denmark's exchange of information with France and Spain occurs under this Directive plus the *Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters* (the *COE/OECD Convention*) as there are no bilateral agreements in place with these partners.

202. The 1989 *Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters* (the *Nordic Convention*), which is in force with respect to Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden, contains detailed provisions on the exchange of information on request for tax purposes. It also contains provisions concerning: automatic and spontaneous exchange; simultaneous examinations; service of documents; presence and participation of representatives from requesting jurisdictions at examinations; and recovery of tax.

203. In 1992 Denmark became a signatory to the *COE/OECD Convention*, which is currently in force with respect to 14 jurisdictions.²⁵ The Convention provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. Denmark is also a signatory to the protocol to this convention. When this protocol and the updated convention enter into force, the *COE/OECD Convention* will provide for exchange of information to the standard. Denmark's exchange of information with Azerbaijan, France and Spain occurs under this Convention as there are no bilateral agreements in place with that partner.

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23. Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.
24. This Directive came into force on 23 December 1977 and all EU members were required to transpose it into national legislation by 1 January 1979. It has been amended since that time.
25. Azerbaijan, Belgium, Denmark, Finland, France, Iceland, Italy, the Kingdom of the Netherlands, Norway, Poland, Sweden, the Ukraine, the United Kingdom and the United States. In addition, Canada, Germany and Spain have signed the Convention and are awaiting ratification.

204. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member which also applies *Council Directive 77/799/EEC* – the problem of overlap is generally addressed within the instruments themselves.²⁶ There are no domestic rules in Denmark requiring it to choose between mechanisms where it has more than one agreement involving a particular partner and thus the competent authority is free for any exchange to invoke all of the available mechanisms or to choose the most appropriate.

205. Denmark’s competent authority is sufficiently resourced with highly skilled staff. The majority of responses are provided in a timely manner and processes are currently being developed which will ensure that periodic updates are always provided by the Danish competent authority to parties which have requested information from Denmark.

C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

206. The Nordic countries have a strong history of promoting mutual assistance for the prevention of international tax evasion and for mutual assistance in assessment and collection of taxes. Since the early 1940s, the Nordic countries signed bilateral agreements amongst each other to facilitate the enforcement of taxes in cases in which taxpayers had left one of the states for the other.²⁷ These agreements covered both reciprocal assistance for the enforcement of tax claims and the exchange of information. The first *Convention between Denmark, Finland, Iceland, Norway and Sweden Regarding Mutual Assistance in Tax Matters* was signed in 1972, and subsequently amended.

207. Article 19 of the Danish *Constitution 1953* provides that the power to act in international affairs lies with the Danish government. The Government can therefore enter into international agreements such as DTCs and TIEAs. Article 43, which notes that “No taxes shall be imposed, altered, or repealed except by statute; nor shall any man be conscripted or any public loan be raised except by statute”, underscores the need for government consent to a treaty (as these can alter or repeal taxes) and means that a law giving consent

26. See in particular Article 27 of the Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters and Article 11 of the 1977 EC directive “Applicability of wider-ranging provisions of assistance.”

27. Finland and Sweden (1943); Norway and Sweden (1949); Denmark and Sweden (1953); Finland and Norway (1954); Denmark and Finland (1955); Denmark and Norway (1956).

to a treaty must be passed by the national Parliament. The law is normally passed within three to twelve months after the signature of the treaty, depending on the schedule of Parliamentary sessions. TIEAs do not however require passage of law. No external approval is needed for a TIEA, but the Ministry of Taxation translates the TIEA into Danish (unless it has been signed in that language) and informs the Parliamentary Committee on Tax Questions about the signature and text of the TIEA before notice of ratification is sent to the counterparty.

208. Since 2007, in addition to establishing new agreements, Denmark has embarked on a process of renegotiation of its older agreements where necessary to bring them in line with the current international standards. To date, 13 agreements have been renegotiated, either by protocol or establishment of an entirely new agreement. Ten of these have revised EoI provisions: Austria, Belgium, Croatia (new DTC), Georgia (new DTC), Israel (new DTC), Luxembourg, Poland, Serbia (new DTC), Singapore and Switzerland.

Other forms of exchange of information

Spontaneous exchange

209. Denmark has for some years participated in spontaneous exchange of information with EU members in accordance with the *Council Directive 77/799/EEC* (Article 4), with Nordic jurisdictions in accordance with the *Nordic Convention* (Article 11) and with other parties to the *COE/OECD Convention* (Article 7). Denmark's agreements with Aruba and Germany also contain specific articles allowing for spontaneous information exchange and the DTC with India allows for exchange of information "on a routine basis".

Number of countries with which Denmark has spontaneously exchanged information

| | 2007 | 2008 | 2009 |
|---------------|-------------|-------------|-------------|
| Sent to | 42 | 39 | 45 |
| Received from | 17 | 18 | 20 |

210. If Danish auditors and colleagues during the audits and assessments find information that might be interesting to another jurisdiction, this information will be exchanged spontaneously. All types of information may be exchanged in this manner. Commonly, the competent authority passes information spontaneously without looking into whether there is more or similar information held elsewhere in the Danish tax authority. As a result, a spontaneous exchange of information can result in a request for information being received in Denmark, as the initial spontaneous exchange has led to an

inquiry overseas which needs further information. If the Danish competent authority learns that one of its partners is not using the information received from Denmark, Denmark stops spontaneous provision of information to that partner.

211. The Danish competent authority also receives a lot of spontaneous information from EoI partners. Normally, information concerning legal persons is forwarded directly to assessors at the relevant local tax centre where the taxpayer is registered. For information received concerning natural persons, the competent authority works closely with assessors who analyse the received information and provides feedback to originating jurisdictions on the usefulness of the information received.

Automatic exchange

212. Denmark participates in automatic exchange of information with EU members (*Council Directive 77/799/EEC* Article 3 and *Council Directive 2003/48/EC* of 3rd June 2003 on taxation of savings income in the form of interest payments Article 9) and with its Nordic partners (*Nordic Convention* Article 11).

Number of countries with which Denmark has automatically exchanged information

| | 2007 | 2008 | 2009 |
|---------------|-------------|-------------|-------------|
| Sent to | 72 | 82 | 81 |
| Received from | 41 | 40 | 39 |

213. Most automatic exchange takes place each year around 1 July; for VAT it is commonly early in the year. Information is sent via a secure mail system or by way of encrypted compact discs.

214. Presence of officials: From time to time, Nordic jurisdictions ask that their officials be allowed to be present in Denmark to participate in an audit related to direct taxes. This occurs in accordance with Article 13 of the *Nordic Convention* and specific articles contained in 20 of Denmark's TIEAs.²⁸ To date there have been 15 requests for presence received from Norway, 7 from Sweden, and 1 from Finland. During the last three years, Denmark has sent one request for presence in another jurisdiction. Where a foreign tax official is in Denmark for an audit, s/he may not ask questions

28. Andorra; Anguilla; Antigua and Barbuda; Aruba; Bahamas; Bermuda; British Virgin Islands; Cayman Islands; the Cook Islands; Gibraltar; Guernsey; Isle of Man; Jersey; Netherlands Antilles; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Samoa; San Marino; and Turks and Caicos Islands.

to the audited legal/natural person and cannot take decisions concerning the audit. Any information arising from the audit which the foreign official wishes to use must be requested via normal EoI processes.

215. Multilateral controls: Multilateral controls are joint audits of the European arms of multinational companies with respect to VAT (in accordance with *Council Regulation 1798/2003*), direct taxes (*Council Directive 77/799/EEC*) and excise duties (*Council Directive 2073/2004*). During the last three years Denmark has participated in 16 multilateral controls, 13 of which are currently in progress.²⁹ Such controls are commonly triggered by: (i) proposals from tax auditors who participate in the audit/control of larger companies; (ii) automatic or spontaneous exchange of information between countries; or (iii) VIES.³⁰ Ideally, a multilateral control is completed within a year.

216. Simultaneous audits: Denmark participates in a network of Scandinavian simultaneous audits together with Iceland, Finland, Norway and Sweden under Article 12 of the *Nordic Convention*. The competent authority of each country is represented in the simultaneous audit network. In the past three years, Denmark has taken part in 20 simultaneous audits. On receipt of a detailed proposal sent by the competent authority from one of the participating countries, the network decides whether to launch the simultaneous audit and agrees the: (i) areas are to be audited; (ii) resource allocation and timing; and (iii) which country is responsible for project management (usually the proposing country). The network's decision and the collected information are disseminated via the competent authority to the audit manager. All exchange of information involved in a simultaneous audit occurs via the competent authority, with regard given to confidentiality and security of the exchange.

Foreseeably relevant standard (ToR C.1.1)

217. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 26(1) of the *OECD Model Taxation Convention*.

29. The participating countries have been: Austria, Belgium, the Czech Republic, Finland, France, Germany, United Kingdom, Hungary, Latvia, Lithuania, Malta, Netherlands, Poland, Slovenia, Spain and Sweden.

30. VAT Information Exchange System. See http://ec.europa.eu/taxation_customs/vies/.

218. Of Denmark’s bilateral agreements with 93 jurisdictions, 33 provide for the exchange of information when it is “foreseeably relevant” to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. A further 55 agreements provide for the exchange of information when it is “necessary” for the administration and enforcement of the domestic tax laws of the requesting jurisdiction. And two agreements (with Bermuda and the United States) provide for exchange of “relevant” information. Denmark’s agreements with 89 partners meet the “foreseeably relevant” standard.³¹

219. The agreement with the Soviet Union, which remains in force with respect to Armenia, Belarus and Kyrgystan, incorporates distinct wording however (emphasis added): “The competent authorities of the Contracting States shall, within the limitations imposed by their national laws, exchange such information concerning essential changes to their tax laws as well as, upon request, such other documents which are necessary to carry out the taxation covered by this Convention.” The underlined phrase indicates that exchange of information could currently, or in future though enactment of new laws, be limited. While the agreements with these jurisdictions could benefit from clarification on this issue, in practice, neither Denmark nor the three concerned partners have raised concerns with respect to exchange of information under this agreement.

220. Similarly, the agreement with Trinidad and Tobago incorporates additional language, noting that it applies to “... such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary ...”. The bracketed text is not in line with the standards as it limits the exchange of information article to information at the parties’ disposal under taxation laws, not information at their disposal under other laws, and it limits the exchange of information to information which is at their disposal in the normal course of administration. Thus, if it is not “normal” for one of the parties to obtain certain information, the information cannot be provided to the other Contracting State. This agreement does not meet the foreseeably relevant standard. In practice this wording will not limit Denmark’s ability to respond to a request from Trinidad and Tobago as the guidelines published by Denmark with respect to this agreement note that information is to be exchanged in accordance with the standard set down in Article 26 of the *OECD Model Taxation Convention*.

31. The term “necessary” is recognised in the commentary to Article 26 of the *OECD Model Tax Convention* to allow for the same scope of exchange as does the term “foreseeably relevant”. See Article 1 of the *OECD Model TIEA*, para.5.4 of the Revised Commentary (2008) to Article 26 of the *UN Model Convention* and para.9 of the Commentary to Article 26 of the *OECD Model Convention*.

221. There are also 12 jurisdictions with which Denmark’s exchanges information in accordance with multilateral agreements. Exchange of information with Azerbaijan, France and Spain can occur under the *COE/OECD Convention*, which uses the foreseeable relevant standard, and for France and Spain it may also occur under *Council Directive 77/799/EEC*, which uses the “necessary” standard. While the *Nordic Convention* does not phrase its provision the same way, it could be expected that Article 4 of that convention allows for exchange of foreseeable relevant information: “A Contracting State shall be obliged to provide assistance as referred to in Article 1 regarding all tax matters and all tax claims arising in another Contracting State in accordance with its laws relating to the taxes and levies covered by Article 2.”

222. Records held by the Danish competent authority indicate that only one request for information has been declined during the last three years. The request was declined by Denmark with the explanation that not all domestic available means of investigation had been exhausted by the requesting party. The requesting party agreed with the determination and used alternative domestic avenues to source the information it was seeking.

In respect of all persons (ToR C.I.2)

223. For exchange of information to be effective it is necessary that the obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that EoI mechanisms will provide for exchange of information in respect of all persons. Eighty-four of Denmark’s agreements specifically provide for exchange of information with respect to all persons. None of these agreements restricts the applicability of the exchange of information provision to certain persons, for example those considered resident in one of the States.

224. Ten of Denmark’s DTCs limit the application of the treaty to residents of the contracting parties, those with; Brazil, India, Japan, the Republic of Korea, Montenegro, Morocco, Romania, Trinidad and Tobago, the United Kingdom and Zambia. As Romania and the United Kingdom are EU Members, subject to the *Council Directive 77/799/EEC*, which allows for exchange of information with respect to all persons, the limited wording in these two DTCs is clearly not be a concern in practice. The other eight agreements which limit the application of the treaty to residents of the contracting parties also note that information is to be exchanged for carrying out the provisions of domestic laws. As the domestic laws are applicable to non-residents as well as to residents, it is likely that under these eight agreements information can be exchanged in respect of all persons.

225. In addition to the bilateral agreements, exchange of information with a further 12 jurisdictions occurs under the *COE/OECD Convention*, *Council Directive 77/799/EEC* and the *Nordic Convention*. None of these agreements restricts the applicability of the exchange of information provision to certain persons, for example those considered resident in one of the States.

226. The Danish competent authority has advised that it has not had any difficulties with any of its 105 partners with respect to this issue. Denmark has provided and received information unrestricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested.

Obligation to exchange all types of information (ToR C.1.3)

227. Forty of Denmark's agreements include the wording of Article 26(5) of the *OECD Model Tax Convention*, which states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

228. However, 53 of Denmark's agreements do not contain such a provision³² as these are older agreements, predating changes to the *OECD Model Tax Convention*. For 25 of these,³³ as neither Denmark nor its partner suffers from limitations to its access to bank information, the absence of a provision in line with Article 26(5) of the *OECD Model Tax Convention* does not result in the agreement falling below the international standard.

229. For some of Denmark's partners which have domestic restrictions on access to information, the absence of a provision akin to Article 26(5) of the *OECD Model Tax Convention* means these agreements do not establish an obligation to exchange all types of information. As Denmark has a large number of agreements, it is important that the current program of updating

32. Argentina, Armenia, Australia, Bangladesh, Belarus, Brazil, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Egypt, Estonia, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, the Republic of Korea, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Malta, Mexico, Montenegro, Morocco, the Netherlands, New Zealand, Pakistan, Philippines, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Tanzania, Thailand, Tunisia, Turkey, Uganda, Ukraine, the United Kingdom, Venezuela, Vietnam and Zambia.

33. Argentina, Australia, Canada, China, Cyprus, Czech Republic, Estonia, Germany, Greece, Hungary, India, Ireland, Italy, Japan, the Republic of Korea, Malta, Mexico, the Netherlands, New Zealand, Portugal, Russia, Slovak Republic, Slovenia, South Africa and Turkey.

them to incorporate wording in line with Article 26(5) of the *OECD Model Tax Convention* continues.

230. The *COE/OECD Convention* – which underpins exchange of information with Azerbaijan, France and Spain – has in its protocol language corresponding to Article 26(5) of the *OECD Model Tax Convention*. This protocol is not yet in force however. The *Nordic Convention* does not specifically contain such language, though it does refer to exchange of financial information as one type of information exchange spontaneously and automatically. It could thus be expected that this convention – which underpins exchange of information with the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden – envisages the sharing of all types of information, including bank information.

231. The Danish competent authority has indicated that usually it experiences no difficulties in getting bank information. On a few occasions requests for information sent to Switzerland have been declined, though this will change as soon as the revised treaty is in force (from 2011). Further, the need to obtain an authorisation from one other partner's taxpayers in order to access bank accounts has on a very small number of occasions made it difficult to access such bank information.

Absence of domestic tax interest (ToR C.1.4)

232. Nineteen of Denmark's agreements specifically include the obligation to exchange information regardless of whether the requested jurisdiction needs the information for its own purposes, in accordance with Article 26(4) of the *OECD Model Tax Convention*.

233. Denmark's 74 other agreements do not contain such a provision. There are no domestic tax interest restrictions on Denmark's powers to access information, which require that the information be relevant to the determination of a tax liability in Denmark (see section B.1 of this report). Denmark is able to exchange information, including in cases where the information is not publicly available or where it is not already in the possession of the governmental authorities.

234. A domestic tax interest requirement may however exist in some of these partners countries. In such cases, the absence of a specific provision requiring exchange of information unlimited by domestic tax interest will serve as a limitation on the exchange of information which can occur under the relevant agreement. In practice, Denmark has experienced no difficulties arising from domestic tax interest provisions in its partner jurisdictions. No requests for information have been declined on this basis.

235. The *COE/OECD Convention* – which underpins exchange of information with Azerbaijan, France, and Spain – has in its protocol language

corresponding to Article 26(4) of the *OECD Model Tax Convention*. This protocol is not yet in force however. While the *Nordic Convention* does not contain specific language on this issue, there is no domestic tax interest restriction in the domestic legislation of the parties to that convention.

Absence of dual criminality principles (ToR C.I.5)

236. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

237. There are no such limiting dual criminality provisions in all but one of Denmark’s bilateral or in its multilateral agreements. The exception can be found in Denmark’s 1973 DTC with Switzerland.³⁴ A new Protocol established between Denmark and Switzerland, which has not yet entered in force, has however removed this dual criminality clause.

Exchange of information in both civil and criminal tax matters (ToR C.I.6)

238. There is no distinction drawn in most of Denmark’s agreements between civil and criminal matters as far as taxation is concerned. Indeed, some refer to fighting fiscal evasion as one of the objects of the agreement and in some others the first paragraph of the exchange of information article mentions that the information exchange will occur *inter alia* “for the prevention of evasion or avoidance of, or fraud in relation to, such taxes”.

239. The exception to this is the current agreement with Switzerland. Denmark and Switzerland have however agreed a new Protocol to this agreement which incorporates the language of Article 26 of the *OECD Model Tax Convention* and, once this is in force, it will clearly allow for exchange of information in both civil and criminal tax matters. Currently, the agreement notes that the information “...shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement” and no mention is made of the ability to provide information for the “enforcement of domestic laws” or to those concerning with the enforcement or prosecution or determination of appeals. To date, information obtained from Switzerland has related to civil tax matters.

34. This states that (emphasis added) *In no case shall the provisions of this Article be construed so as to impose on one of the Contracting States the obligation to ... supply particulars which are not obtainable under its own laws or the laws of the State making such application.*

240. As noted previously in Section B of this report, requests for information which relate to criminal matters are passed from the competent authority within the CTA to the Police to action.

Provide information in specific form requested (ToR C.1.7)

241. There are no restrictions in the exchange of information provisions in Denmark’s agreements that would prevent Denmark from providing information in a specific form, as long as this is consistent with its own administrative practices. Indeed, 22 of Denmark’s agreements³⁵ include specific clauses to reinforce the need to provide information in the form requested. In addition, Article 20 of the *COE/OECD Convention* – which underpins Denmark’s exchange of information with Azerbaijan, France, and Spain – specifically notes in its protocol “If, with respect to a request for information, the applicant state has specified the form in which it wishes the information to be supplied and the requested state is in a position to do so, the requested state shall supply it in the form requested.” This protocol is not yet in force however.

242. The competent authority is prepared to provide information in the specific form requested to the extent permitted under Danish law and administrative practice. On one occasion in the past 3 years, one of Denmark’s peers notes that Denmark was unable to satisfy a request that the information be provided in the form of certified authenticated copies of original documents due to a limitation in domestic law. The Danish competent authority is unable to find records of such an occurrence and has assured assessors that it is able to provide information in the specific form requested.

In force (ToR C.1.8)

243. Denmark has an extensive network of 93 bilateral agreements that provide for exchange of information in tax matters, comprising 70 DTCs and 23 TIEAs. Fourteen of Denmark’s TIEAs are not yet in force as they are awaiting ratification by the partner jurisdictions, and four new Protocols to treaties are waiting for ratification by the partner jurisdiction (Belgium and Singapore) or are awaiting ratification by both partners (Poland and Switzerland). Denmark’s most recently signed DTC, with Kuwait, is not yet in force, nor is the new DTC with Israel, though the original DTC between Denmark and Israel remains in force. Denmark can also exchange

35. With Andorra; Anguilla; Antigua and Barbuda; Aruba; The Bahamas; Bermuda; the British Virgin Islands; the Cayman Islands; Chile; the Cook Islands; Gibraltar; Guernsey; the Isle of Man; Jersey; the Netherlands Antilles; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Samoa; San Marino; the Turks and Caicos Islands; and the United States.

information with a further 12 jurisdictions under the *Council Directive 77/799/EEC*, *Nordic Convention* and *EU/OECD Convention*, all of which are in force.

244. For the large majority of the agreements, ratification by Denmark has occurred within a year of signing. Indeed, for some the period of time between signature and ratification by Denmark has been as brief as 2 months. Nine DTCs took substantially longer periods before they were ratified, those with; Morocco (8 years), Italy (44 months), Greece (32 months), Venezuela (30 months), Chile (27 months), Turkey (23 months), Trinidad and Tobago (23 months), the Netherlands (20 months) and Argentina (20 months). The longer delays are however often to be imputed to the partners rather than to Denmark.³⁶ The longest ratification process on record for Denmark took 18 months.

245. There are presently two Protocols which both parties have not yet brought into force – with Poland and Switzerland. These were signed on 7 December 2009 and 21 August 2009 respectively. Denmark ratified the Protocol with Poland on 24 June 2010 and is currently awaiting Polish notification. Danish ratification of the Protocol with Switzerland is expected to occur very soon.

In effect (ToR C.1.9)

246. All of Denmark’s agreements which have been signed and ratified by both parties are in effect in Denmark. For information exchange to be effective, the parties to an exchange of information agreement need to enact any legislation necessary to comply with the terms of the arrangement. This report raises no concerns relating to Denmark’s capacity to use its powers to obtain the information needed to give effect to the terms of arrangements that it is currently entering into.

Determination and factors underlying recommendations

| Phase 1 Determination |
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| The element is in place. |
| Phase 2 Rating |
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. |

36. For example, for the five most recent cases, the ratification process was completed by Denmark in 5 months for the DTC with Argentina, 18 months for the Netherlands, 12 months for Venezuela, 10 months for Italy and 3 months for Chile.

C.2. Exchange-of-information mechanisms with all relevant partners

247. Denmark's network of 93 bilateral agreements and 3 multilateral agreements encompasses a wide range of counterparties, including all of the Nordic jurisdictions, all of the EU member States, all of the 31³⁷ OECD member economies, plus:

- all of its 9 primary trading partners (China, France, Germany, Italy, the Netherlands, Norway, Sweden, the United Kingdom and the United States);
- 18 of the 19 jurisdictions which are members of the G20 (not Saudi Arabia);
- 69 Global Forum member jurisdictions;³⁸ and
- 42 counterparties in Europe, 24 in North America, 23 in Asia, 8 in Africa, 4 in Oceania and 4 in South America.

248. Denmark has never declined to establish an agreement with a jurisdiction seeking the same. On occasion it has been approached by no-tax jurisdictions seeking to establish DTCs and has instead offered to establish a TIEA.

249. It can be seen that Denmark has an extensive treaty network allowing for exchange of information for tax purposes. In addition, the Danish authorities have an ongoing programme of establishing agreements and revising agreements where necessary. As Denmark has established agreements with its most important partners, commonly its new agreements arise from requests received from other jurisdictions seeking an agreement with Denmark. These negotiations are prioritised on the basis of the order in which the jurisdictions approach Denmark.

250. Denmark's most significant EoI relationships are with Germany, Poland, Sweden, Russia, the United Kingdom and the United States. Most commonly this is due to migration patterns or because large companies have operations in Denmark and the other jurisdiction. There is regular, sometimes daily, liaison with the competent authorities in all six of these countries.

37. As at June 2010.

38. Not Bahrain, Barbados, Belize, Brunei Darussalam, Costa Rica, Guatemala, Hong Kong, China, Liberia, Liechtenstein, Macau, China, Marshall Islands, Mauritius, Montserrat, Nauru, Niue, Panama, Qatar, Saudi Arabia, the Seychelles; the United Arab Emirates, Uruguay or Vanuatu.

Nordic co-operation to establish TIEAs

251. Joint Nordic TIEA co-operation began in 2006 with the objective of co-ordinating the Nordic approach for entering into TIEAs with jurisdictions identified as tax havens in the 2000 OECD report *Harmful Tax Competition: An Emerging Global Issue*. In order to strengthen the Nordic negotiating position and to keep costs for this work down, the Nordic countries co-ordinate their negotiation work under the auspices of the Nordic Council of Ministers. The Faroe Islands and Greenland also independently take part in this work.³⁹

252. A steering group of representatives from all Nordic countries co-ordinates the negotiation efforts. Participants in the steering group are experts with experience from their finance ministries, as well as experience in national and international work in the field of tax evasion. Negotiations are carried out by a team comprising a project leader and one or more representatives from the other countries. The actual information exchange agreements are, however, entered into on a bilateral basis. Nordic co-operation in TIEA negotiations has reaped great success. As a result of this co-operation, Denmark has signed 25 TIEAs to the standard since 2007, 7 of which are in force (see Annex 2 to this report for details).

Determination and factors underlying recommendations

| Phase 1 Determination | |
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| The element is in place. | |
| | Denmark should continue to develop its EOI network with all relevant partners. |
| Phase 2 Rating | |
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. | |

39. For tax purposes, Greenland and the Faroe Islands are separate jurisdictions. Tax treaties and the *Nordic Convention* are in force between Denmark and these two jurisdictions.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards (ToR C.3.1)

253. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries generally impose strict confidentiality requirements on information collected for tax purposes.

254. All but one of the exchange of information articles in Denmark's DTCs have confidentiality provisions modeled on Article 26(2) of the OECD *Model Tax Convention*. Denmark's 1986 DTC with the (former) Union of Soviet Socialist Republics, which still applies with respect to Armenia, Belarus and Kyrgyzstan, contains no provisions to ensure the confidentiality of information received. It is recommended that Denmark keep ensuring that appropriate confidentiality is maintained in exchanges of information with Armenia, Belarus and Kyrgyzstan.

255. All of Denmark's TIEAs have confidentiality provisions modeled on Article 8 of the OECD *Model TIEA*. Three of Denmark's TIEAs with CARICOM members – Antigua and Barbuda, Saint Lucia and Saint Vincent and the Grenadines – contain confidentiality provisions modeled on Article 26(2) of the OECD *Model Tax Convention* and also note that "In case of exchange of information in respect of an identified or identifiable individual, the provisions of Chapter 6, in particular the Article 199, of the Economic Partnership Agreement between the Cariforum States and the European Community and its Member States of 15 October 2008 shall be applied accordingly." Article 199 of that agreement outlines principles and general rules relating to information exchange. Importantly, these principles note that (i) information should only be used as authorised by the sending party; and (ii) persons to whom the information concerns (e.g. the subject of an EoI request) have a right to receive all information related to them, except where it is in the public interest not to allow this.

256. The *Council Directive 77/799/EEC*, the *Nordic Convention* and the *EU/OECD Convention* also contain safeguards corresponding to those in

Article 26(2) of the *OECD Model Tax Convention*, restricting the disclosure of information by the competent authority of the receiving state.

257. Information received is also confidential according to the public administration's "professional secrecy" requirements contained in the *Public Administration Act 1985* s.27. Importantly, this act provides that "Any person acting within the public administration is bound by professional secrecy ... whenever information is designated as confidential by Statute or other legally binding provision or whenever it is otherwise necessary to keep the information secret to protect material public or private interests."

258. Article 152 of the *Criminal Code 1930* (straffeloven) establishes that "Any person who is exercising or who has exercised a public office or function, and who unlawfully forwards or exploits confidential information, which he has obtained in connection with his office or function, shall be liable to a fine or to imprisonment for any term not exceeding six months." In certain circumstances this penalty can be increased to imprisonment for up to two years. That article goes on to specify in paragraph three that "Information is confidential when made so in an Act or by other stipulations, or when it is necessary to keep it a secret in order to protect important public or private interests." There have been no cases in the past three years where an official of the Ministry of Finance, including the tax administration, has been found to have breached the professional secrecy rules of the Danish *Public Administration Act 1985* or committed an offence under the *Criminal Code 1930*.

259. In accordance with art.17 of the *Tax Administration Act*, secrecy applies to all information in relation to legal entities or individual's personal or economic circumstances which is in the possession of the CTA. Information remains "owned" by the person who provided it to the CTA (e.g. the taxpayer or the foreign competent authority) and the CTA may only disclose information to third parties if allowed by the person who originally provided it.

260. In practice, all communication with a partner authority is treated as confidential. This includes, for example, questions and clarifications made after receipt of the initial request. The CTA operates in a close to paperless environment. All incoming requests and all information received is saved in a secure IT system (CAPTIA) to which only authorised staff in the tax administration have access. All information is exchanged either by post, by encrypted e-mail, encrypted compact discs, or by CCN mail (the secure mail system used by members of the EU). There have been no cases in Denmark where information received by the competent authority from an EoI partner has been made public other than in accordance with the terms under which it was provided to Denmark.

All other information exchanged (ToR C.3.2)

261. The confidentiality provisions in the agreements and in Denmark’s domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Determination and factors underlying recommendations

| Phase 1 Determination |
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| The element is in place. |

| Phase 2 Rating |
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| To be finalised as soon as a representative subset of Phase 2 reviews is completed. |

C.4. Rights and safeguards of taxpayers and third parties*Exceptions to requirement to provide information (ToR C.4.1)*

262. All of Denmark’s exchange of information agreements ensure that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, or information which is the subject of attorney client privilege, or information the disclosure of which would be contrary to public policy.

263. As noted previously, in section B1 of this report, Denmark’s competent authority is able to decline to exchange information where the information is covered by attorney-client privilege. Attorney-client privilege only applies to communications between a client and an attorney to the extent that the attorney acts in his or her professional capacity as an attorney.

264. In theory Denmark can decline to exchange information where the information is a trade, business industrial, commercial or professional secret; or where disclosure would be contrary to public policy (*ordre public*). In practice, however, this has not occurred.

Determination and factors underlying recommendations

| Phase 1 Determination |
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| The element is in place. |
| Phase 2 Rating |
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. |

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

265. There are no provisions in Denmark’s laws or in its agreements pertaining to the timeliness of responses or the timeframe within which responses should be provided. As such, there appear to be no legal restrictions on the ability of the competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

266. Over the past three years, 72% of the responses to EoI requests have been made by Denmark’s competent authority within 90 days. In 10% of cases, the responses were made within 180 days, in 11% of cases within 1 year; and in 2% of cases the response was provided more than 1 year after receipt of the original request for information.

267. Many of the requests that the competent authority receives are complex. However, the competent authority estimates that for nearly 50% of the requests received, the information is already in the possession of the CTA, is publicly available or relates to bank information. All such requests can be answered directly by the competent authority itself. The other 50% of requests require attention by assessors at a local tax centre and these involve a more timely process.

268. Requests that are not fulfilled within 90 days are typically cases where a detailed investigation is required of assessors at a local tax centre in order to obtain the information. The competent authority does not have a process for following up on EoI requests which are being handled by assessors at a local tax centre. As the competent authority does not routinely follow up with these assessors, there have been a small number of occasions in which

the competing workload of an assessor or the relocation of an assessor has led to delays and these delays were not quickly identified and rectified by the competent authority.

269. Commonly, updates are provided to the requesting authorities only when the counterparty asks for an update. The competent authority has decided to review its policy on this. A new procedure will be implemented in the future under which all counterparties will receive periodic updates on the status of their requests for information. Denmark's EoI partners were not dissatisfied with the timeliness of responses. Nevertheless, there appears to be opportunity for improvement in this regard, and indeed, the competent authority has already identified this and decided to review its processes to further improve the timeliness of responses given to requesting jurisdictions.

Organisational process and resources (ToR C.5.2)

270. Article 14 of the *Constitution 1953* provides that the Prime Minister decides upon the distribution of the duties of government among the Ministers. The Prime Minister can therefore decide, and indeed has decided, that the Minister for Taxation is responsible for taxation (including international affairs connected with taxation). The Minister for Taxation has delegated the role of competent authority to the Tax Administration: Ministry of Taxation Notice 1029/2005 specifically provides that the Tax and Customs Administration is authorised to take decisions in accordance with DTCs as the "competent authority".

271. The competent authority in Denmark is the Customs and Tax Administration (CTA). The work related to EoI which is conducted in the CTA's Copenhagen office centres around general policy matters and negotiation of treaties and administrative agreements. Relevant work is also conducted in local tax centres.⁴⁰ Importantly, the Tax Centre Aarhus is responsible for exchange of information and mutual assistance in non-criminal matters; specific and spontaneous information concerning direct taxes; individual VAT cases; individual cases in the field of excise duties; and automatic exchange of information. In addition, the Tax Centre Copenhagen manages specific and spontaneous exchanges on individual fraud cases; as well as fraud cases and mutual assistance concerning customs duties.

40. The Anti Fraud Unit located at Tax Centre Hoeje-Taastrup (Copenhagen vicinity) conducts: specific and spontaneous exchange of information in all types of criminal/fraud cases; and co-ordination in anti-fraud matters. The Centre for Transfer Pricing located in Copenhagen conducts: all mutual agreement cases, including mutual agreement cases about transfer pricing and EU-Arbitration Convention cases.

272. Responsibility for exchange of information was delegated in 2006 from the head office to a dedicated team in the office located in the Randers tax centre, which during 2010 moved to the nearby Aarhus tax centre. This team is responsible for automatic and spontaneous exchange as well as for responding to requests for information with respect to direct taxes, VAT and excise duties, except for fraud cases which are handled by a separate dedicated fraud unit within the CTA. A list of the persons authorised to sign as the Danish competent authority for international co-operation is sent to the new EoI partner when an agreement comes into force and is distributed to all partners when it is updated. It is also available on the OECD and CIRCA websites.

Resources

273. The competent authority's budget is a component of the budget of the CTA. Each department under the Ministry is given an annual budget to administrate, which should cover all normal expenses. Decisions concerning unusual large expenditure (*e.g.* comprehensive changes to the IT-system) are made at a higher level and another budget covers this.

274. Currently, the team responsible for international exchange of information comprises four persons, all located in the Tax Centre in Aarhus. One person handles all requests from the Nordic countries, one handles requests from countries which are members of the EU; one handles requests from other partners; and the fourth provides administrative and co-ordination support.

275. No specialist training is provided to the officials in the competent authority. Officials new to working with exchange of information learn by on-the-job training and knowledge sharing. The staff of the competent authority attend training seminars when relevant (*e.g.* recent EU training on E-forms). This system of knowledge transfer has worked well to date, with the one exception being during 2006 when a reorganisation of the CTA resulted in responsibility for exchange of information being transferred from the central office to the office in Randers. As none of the original team moved to the Randers office, the newly appointed staff, who did not receive training, took a little time to establish efficient procedures for handling EoI.

276. The competent authority now has an instruction manual based on the "OECD Manual on the implementation of exchange of information provisions for tax purposes" which is available for all staff in the Danish tax administration. The competent authority does not use any performance measures. It compiles annual relevant statistics concerning the number of EoI matters handled.

277. The CTA has a well-developed IT system in which most information, including correspondence and tax assessment information can be found. The

competent authority has access to almost all information in the tax administration's IT system. Nearly 50% of incoming requests regarding direct taxes are handled by the competent authority itself, without involving others. The staff of the competent authority are able to directly obtain information found in the tax administration IT system, including the details contained within the CCA companies register, and can themselves collect information from financial institutions. Commonly this is completed within a few weeks.

278. If the requested information is not found in this IT system, the staff of the competent authority ask assessors from the local tax centre where the taxpayer is registered to collect the information from the taxpayer or others in possession of the information. In every tax centre there is at least one designated contact person to whom requests from the competent authority are forwarded and these contact persons ensure action is taken, either by collecting the information him/herself or by allocating the task to another assessor. The personnel resources are of course not unlimited. Tax assessors in the local tax centres have to prioritise their time and EoI requests are not always given the highest priority. On a small number of occasions, competing priorities have resulted in some delays in responses. The competent authority is currently creating a process under which they will follow up with the relevant contact persons at pre-determined intervals to ensure EoI requests are being attended to promptly and to ensure the competent authority can provide updates to requesting parties.

279. Where information requested is in the possession or control of a third party such as a service provider, *e.g.* a trustee, and the taxpayer is not taxable in Denmark, it will most likely be the competent authority that will collect the information from the third party – unless the third party has to be investigated to collect the information. If investigative powers are needed, the request will be forwarded to the local tax centre where the third party is registered.

280. When receiving a request, either from an EoI partners or from a Danish tax officer, all documents are scanned into ESDH-Captia which is an electronic document and record system in the Danish Ministry of Taxation. The document is automatically assigned a document number and afterwards, when a case is established by the competent authority, the scanned documents are associated to the case. ESDH-Captia contains a register of all EoI partners' competent authorities, Danish taxpayers, individuals and companies and several other public authorities. Detailed records linked to this wide range of parties can be found in the ESDH-Captia system.

281. When the competent authority establishes a case it is categorised by: (i) type of exchange – request/spontaneous/automatic; (ii) incoming/outgoing; (iii) name of partner country; and (iv) VAT number (for companies) / TIN number (for individuals). Additionally it is possible to insert other

descriptions, types of information *etc.*, which might be useful in order to track a special kind of case or information. These categories are used to produce statistics and monitor ongoing cases.

282. If the competent authority subsequently receives additional material or additional questions/requests in a case, this material will be attached to the same case. Once all information is gathered in ESDH-Captia, it can be accessed by authorised personnel from the tax administration anywhere in Denmark. This system also has facilities to log and track requests. It is possible to track cases either by: case number; document number; name; TIN; country; dates for receiving or closing; type (request, spontaneous, incoming, outgoing *etc.*); name of the tax official; or other search criteria which have been entered into the system.

283. Currently, identification of the time taken in responding to a request for information currently only occurs at the initiative of one of the members of the competent authority to review the file. However, the ESDH-Captia system has functionality which allows delays to be automatically flagged. It is possible to insert a reminder date when the request is registered, and a message will appear when the date is reached. The competent authority plans to implement a procedure in the near future which will use this functionality on a systemic basis. This will allow for identification of the time taken for each response and will allow for periodic updates to be provided to partners.

284. Where a request pursuant to a DTC, TIEA or multilateral agreement on administrative assistance (MAD) relates to a criminal matter, the processes are fundamentally different from those described above. Criminal matters must be handed to the Police and, if requested by the Police, the CTA will give advice regarding the case or contribute with their professional expertise. The CTA immediately informs the country or countries involved in the matter that it has been passed to the Police and, as soon as possible, informs the involved authorities of any outcomes of the matter.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

285. There is no evidence that restrictive conditions are placed on Denmark's information exchange practices, either in its legislation or in practice, which would limit the exchange of information other than as provided for in Article 26 of the OECD *Model Tax Convention*. Indeed, the competent authority participates in a number of forms of exchange of information with its partners.

286. The competent authority has advised that its partners rarely make further enquiries in relation to information provided by Denmark. On only one occasion in those three years has Denmark declined a request and this

was because the requesting authority had not exhausted all of its domestic avenues of enquiry before making the EoI request. That partner agreed with Denmark’s evaluation and obtained the information through domestic means.

Determination and factors underlying recommendations

| Phase 1 Determination |
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| The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review. |
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| Phase 2 Rating | |
|---|---|
| To be finalised as soon as a representative subset of Phase 2 reviews is completed. | |
| Factors underlying recommendations | Recommendations |
| Processes and procedures do not allow for identification of when a request for information is taking longer than 90 days. | Denmark should implement its planned new procedures which will allow it to routinely follow-up on progress being made by assessors with requests for information and will allow it to provide the requesting jurisdictions with updates. It should also establish regular communication with the designated contact persons in the tax centres who assist the competent authority with the more complex requests for information. |

Summary of Determinations⁴¹ and Factors Underlying Recommendations

| Determination/rating | Factors underlying recommendations | Recommendations |
|---|---|--|
| Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>) | | |
| Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement. | Information may not be fully available on the owners of companies with limited liability, associations with limited liability, limited liability co-operatives and limited liability partnerships. | It is recommended that the relevant legal provisions be amended to ensure that information is available on the owners of companies with limited liability, associations with limited liability, limited liability co-operatives and partners in limited liability partnership. |
| | There are insufficient mechanisms in place that ensure the availability of information allowing for identification of the owners of bearer shares below a threshold of 5% of the capital or the voting rights in Danish public limited companies. | Denmark should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares. |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |

41. The ratings will be finalised as soon as a representative subset of Phase 2 reviews is completed.

| Determination/rating | Factors underlying recommendations | Recommendations |
|---|------------------------------------|-----------------|
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |
| Banking information should be available for all account-holders (<i>ToR A.3</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |

| Determination/rating | Factors underlying recommendations | Recommendations |
|---|------------------------------------|--|
| The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |
| Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>) | | |
| Phase 1 determination: The element is in place. | | Denmark should continue to develop its EOI network with all relevant partners. |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |

| Determination/rating | Factors underlying recommendations | Recommendations |
|---|------------------------------------|-----------------|
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed. | | |
| The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>) | | |
| Phase 1 determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review. | | |

| Determination/rating | Factors underlying recommendations | Recommendations |
|---|--|--|
| <p>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</p> | <p>Processes and procedures do not allow for identification of when a request for information is taking longer than 90 days.</p> | <p>Denmark should implement its planned new procedures which will allow it to routinely follow-up on progress being made by assessors with requests for information and will allow it to provide the requesting jurisdictions with updates. It should also establish regular communication with the designated contact persons in the tax centres who assist the competent authority with the more complex requests for information.</p> |

Annex 1: Jurisdiction’s Response to the Review Report*

Denmark will like to express a deep appreciation for the hard work done by the assessment team in evaluating Denmark for this combined report. It has been a pleasure working with the team.

Denmark acknowledges the findings of the report.

There have been some developments on Denmark’s EOI network since the report was finalized.

The TIEA with Monaco have now entered into force on October 2, 2010. Both the new protocol with Switzerland and the TIEA with St. Kitts and Nevis has been ratified by both States. Furthermore new TIEA’s with Belize (15 09 2010), Marshall Islands (28 09 2010), Vanuatu (13 10 2010), Liberia (10 11 2010) and Montserrat (22 11 2010) have been signed.

Finally the EU Member States, including Denmark, has reached a political agreement on December 7 to amend the Directive on Administrative Cooperation in the field of taxation. This will ensure that the EU Directive is fully in line with the standard when it comes to transparency and information exchange in tax matters.

* This Annex presents the Jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

Annex 2: List of All Exchange-of-Information Mechanisms in Force

Multilateral agreements

Denmark is a party to the:

- *Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters*, which is currently in force with respect to 14 jurisdictions: Azerbaijan, Belgium, Denmark, Finland, France, Iceland, Italy, the Kingdom of the Netherlands, Norway, Poland, Sweden, the Ukraine, the United Kingdom and the United States.⁴²
- *EU Council Directive 77/799/EEC* of 19 December 1977 (as amended) concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums. This Directive came into force on 23 December 1977 and all EU members were required to transpose it into national legislation by 1 January 1979. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus,^{43,44} Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

42. Canada, Germany and Spain have signed the Convention and are awaiting ratification.

43. Note by Turkey:
The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

44. Note by all the European Union Member States of the OECD and the European Commission:

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

- *EU Council Directive 2003/48/EC* of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.
- *Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters* of 7 December 1989, which is currently in force with respect to Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden.

Bilateral agreements

| | Jurisdiction | Type of Eol arrangement | Date signed | Date into force |
|----|-----------------------------|-------------------------|-------------|---------------------------------|
| 1 | Andorra | TIEA | 240210 | Pending ratification by partner |
| 2 | Anguilla | TIEA | 020909 | Pending ratification by partner |
| 3 | Antigua & Barbuda | TIEA | 020909 | Pending ratification by partner |
| 4 | Argentina | DTC | 121295 | 040997 |
| 5 | Armenia | DTC ⁴⁵ | 211086 | 280987 |
| 6 | Aruba | TIEA | 100909 | Pending ratification by partner |
| 7 | Australia | DTC | 010481 | 271081 |
| 8 | Austria | DTC (protocol) | 160909 | 010510 |
| 9 | Bahamas, The | TIEA | 100310 | 090910 |
| 10 | Bangladesh | DTC | 160796 | 181296 |
| 11 | Belarus | DTC ⁴⁶ | 211086 | 280987 |
| 12 | Belgium | DTC | 161069 | 311270 |
| | | Protocol | 070709 | Pending ratification by partner |
| 13 | Bermuda | TIEA | 160409 | 010110 |
| 14 | Brazil | DTC | 270874 | 051274 |
| 15 | British Virgin Islands | TIEA | 180509 | 150410 |
| 16 | Bulgaria | DTC | 021288 | 270389 |
| 17 | Canada | DTC | 170997 | 020398 |
| 18 | Cayman Islands | TIEA | 010409 | 060210 |
| 19 | Chile | DTC | 200902 | 211204 |
| 20 | China, People's Republic of | DTC | 260386 | 221086 |
| 21 | Cook Islands | TIEA | 161209 | Pending ratification by partner |
| 22 | Croatia | DTC | 140907 | 220209 |
| 23 | Cyprus ⁴⁷ | DTC | 260581 | 100881 |
| 24 | Czech Republic | DTC ⁴⁸ | 050582 | 271282 |

45. The convention between Denmark and the Union of Soviet Socialist Republics still applies.

46. The convention between Denmark and the Union of Soviet Socialist Republics still applies.

47. See notes 43 and 44.

48. Convention between Denmark and the Czechoslovak Socialist Republic still applies.

| | Jurisdiction | Type of Eol arrangement | Date signed | Date into force |
|----|--|--------------------------------|--------------------|---------------------------------------|
| 25 | Dominica | TIEA | 190510 | Pending ratification by both partners |
| 26 | Egypt | DTC | 090289 | 120490 |
| 27 | Estonia | DTC | 040593 | 301293 |
| 28 | Georgia | DTC | 101007 | 010109 |
| 29 | Germany | DTC | 221095 | 251296 |
| 30 | Gibraltar | TIEA | 020909 | 130210 |
| 31 | Greece | DTC | 180589 | 180192 |
| 32 | Grenada | TIEA | 190510 | Pending ratification by both partners |
| 33 | Guernsey | TIEA | 281008 | 060609 |
| 34 | Hungary | DTC | 241078 | 280979 |
| 35 | India | DTC | 080389 | 130689 |
| 36 | Indonesia | DTC | 281285 | 290486 |
| 37 | Ireland | DTC | 260393 | 081093 |
| 38 | Isle of Man | TIEA | 271007 | 260908 |
| 39 | Israel | DTC | 270666 | 311266 |
| | | DTC (New) | 090909 | Pending ratification by partner |
| 40 | Italy | DTC | 050599 | 270103 |
| 41 | Jamaica | DTC | 160890 | 101091 |
| 42 | Japan | DTC | 030268 | 260768 |
| 43 | Jersey | TIEA | 281008 | 060609 |
| 44 | Kenya | DTC | 131272 | 150373 |
| 45 | Korea, Republic of | DTC | 111077 | 080179 |
| 46 | Kuwait | DTC | 220610 | Pending ratification by partner |
| 47 | Kyrgyzstan | DTC ⁴⁹ | 211086 | 280987 |
| 48 | Latvia | DTC | 101293 | 271293 |
| 49 | Lithuania | DTC | 131093 | 301293 |
| 50 | Luxembourg | DTC | 171180 | 220382 |
| | | Protocol | 040609 | 120410 |
| 51 | Macedonia, Former Yugoslav Republic of | DTC | 200300 | 141200 |

49. The convention between Denmark and the Union of Soviet Socialist Republics still applies.

| | Jurisdiction | Type of Eol arrangement | Date signed | Date into force |
|----|--------------------------|-------------------------|-------------|---------------------------------------|
| 52 | Malaysia | DTC | 041270 | 040671 |
| 53 | Malta | DTC | 130798 | 301298 |
| 54 | Mexico | DTC | 110697 | 221297 |
| 55 | Monaco | TIEA | 100610 | Pending ratification by partner |
| 56 | Montenegro | DTC ⁵⁰ | 190381 | 100182 |
| 57 | Morocco | DTC | 080584 | 251292 |
| 58 | Netherlands | DTC | 010796 | 060398 |
| 59 | Netherlands Antilles | TIEA | 100909 | Pending ratification by partner |
| 60 | New Zealand | DTC | 101080 | 220681 |
| 61 | Pakistan | DTC | 221087 | 221087 |
| 62 | Philippines | DTC | 300695 | 271296 |
| 63 | Poland | DTC | 061201 | 311202 |
| | | Protocol | 071209 | Pending ratification by both partners |
| 64 | Portugal | DTC | 141200 | 240502 |
| 65 | Romania | DTC | 131276 | 281277 |
| 66 | Russia | DTC | 080296 | 270497 |
| 67 | Sri Lanka | DTC | 221281 | 230283 |
| 68 | St. Kitts and Nevis | TIEA | 010909 | Pending ratification by partner |
| 69 | St. Lucia | TIEA | 101209 | Pending ratification by partner |
| 70 | St. Vincent & Grenadines | TIEA | 010909 | Pending ratification by partner |
| 71 | Samoa | TIEA | 161209 | Pending ratification by partner |
| 72 | San Marino | TIEA | 120110 | 230410 |
| 73 | Serbia | DTC | 150509 | 181209 |
| 74 | Singapore | DTC | 030700 | 221200 |
| | | Protocol | 250809 | Pending ratification by partner |
| 75 | Slovak Republic | DTC | 050582 | 271282 |
| 76 | Slovenia | DTC | 020501 | 030602 |
| 77 | South Africa | DTC | 210695 | 211295 |

50. Convention between Denmark and the Socialist Federal Republic of Yugoslavia still applies. Confirmed by a note received from the Republic of Montenegro Ministry of Foreign Affairs on 9 August 2007.

| | Jurisdiction | Type of Eol arrangement | Date signed | Date into force |
|----|-----------------------------|--------------------------------|--------------------|---------------------------------------|
| 78 | Sri Lanka | DTC | 221281 | 230283 |
| 79 | Switzerland | DTC | 231173 | 151074 |
| | | Protocol | 210809 | Pending ratification by both partners |
| 80 | Taipei | DTC | 300805 | 231205 |
| 81 | Tanzania | DTC | 060576 | 311276 |
| 82 | Thailand | DTC | 230298 | 110299 |
| 83 | Trinidad and Tobago | DTC | 200669 | 170571 |
| 84 | Tunisia | DTC | 050281 | 280581 |
| 85 | Turkey | DTC | 300591 | 230693 |
| 86 | Turks & Caicos | TIEA | 070909 | Pending ratification by partner |
| 87 | Uganda | DTC | 140100 | 080501 |
| 88 | Ukraine | DTC | 050396 | 200896 |
| 89 | United Kingdom | DTC | 111180 | 171280 |
| 90 | United States ⁵¹ | DTC | 190899 | 310300 |
| 91 | Venezuela | DTC | 031298 | 210601 |
| 92 | Vietnam | DTC | 310595 | 240496 |
| 93 | Zambia | DTC | 130973 | 181074 |

51. Also provides for exchange of information with Guam, Puerto Rico and the US Virgin Islands.

Annex 3: List of all Laws, Regulations and Other Material Received

The Constitution of Denmark
Act on the European Community
Act on Greenland Self Government
Act on Home Government of the Faroes

Commercial Laws

Act on Arbejdsmarkedets Tillægspension
Act on Approved Auditors and Audit Firms
Act on Average Adjusters
Act on Certain Commercial Undertakings
Act on Terrorism Insurance and Nonlife Insurance
Commercial Enterprises Financial Statements Act
Companies Act
Consolidated Bookkeeping Act
Consolidated Insurance Mediation Act
Consolidated Supervision of Company Pension Funds Act
Executive Order on Auditors Reports
Executive Order on Average Adjusters
Executive Order on Average Adjusters Qualification Examination
Executive Order on Danish Supervisory Authority
Executive Order on Independence of Auditors
European Co-operative Society Act

Investment Associations Special Purpose Associations Collective Investment Schemes Act

LD Pensions Act

Mortgage Credit Loans and Bonds Act

Order on the minimum accounting requirements for smaller businesses

Order on the minimum accounting requirements for larger businesses

Securities Trading Act

Taxation Laws

Registration in the VAT Act

Tax Assessment Act (selected sections)

Tax Control Act (selected sections)

Banking Laws

Act Amending Financial Business Act etc

Act on Guarantee Fund for Depositors and Investors

Crossborder Currency Transfer Act

Financial Business Act 2008

Financial Stability Act 2008

Mortgage Credit Loans and Bonds Act

Payment Services Act 2009

Other

Criminal Code

FATF Mutual Evaluation of Denmark, June 2006

Denmark's 3rd FATF Follow-up Report 180610

Annex1 Denmark Rules Regulation

Annex2 Greenland Rules Regulation

Annex3 Faroe Islands Rules Regulation

Annex4 MLF

Note from Montenegro confirming treaties with Yugoslavia still apply

The Public Administration Act 1985

PMLA 2009

SKAT guidance “starting your own business” May 2006

Annex 4: People Interviewed During On-Site Visit

Ministry of Taxation (including competent authority and a tax assessor)

Commerce and Companies Agency (including CVR)

FSA and Money Laundering Secretariat

Civil Affairs Agency

