

Unofficial translation

Report to the Danish Parliament on the North Sea

**Minister for Economic and Business Affairs
Denmark
October 2003**

1. Introduction

On 20 February 2003, during the interpellation debate over the taxation of the oil and gas resources in the North Sea, the Danish Parliament adopted the following text (V 54):

"The Danish Parliament calls on the Government to submit, by 1 October 2003, a report to the Danish Parliament outlining the possibilities of – in an economic and balanced way – ensuring that the State gains a larger share of the values in connection with the present and future exploitation of the oil and gas resources in the North Sea.

In this connection, it is assumed that talks will at the same time be undertaken with the holders of the licence that expire in 2012 with a view to a possible extension."

This report follows up on decision no. V 54. The report describes the historical distribution of values between the Danish State and the licensees and accounts for the expectations from the future oil and gas production in the Danish sector of the North Sea. Finally, it presents the results of the Government's talks with A.P. Møller - Mærsk regarding an extension of the Sole Concession rights for the exploration and production of oil and gas in the North Sea, which expires in 2012.

The oil and gas activities in the Danish sector of the North Sea have developed far more positively than originally anticipated in the early 1960s. This is primarily due to skilful efforts from the companies involved in exploration and production in the North Sea.

At the same time, the oil and gas activities contribute positively to the Danish balance of payment and create jobs and industrial development. Since 1997, Denmark has been self-sufficient in energy, primarily on account of the oil and gas production in the North Sea.

The Government wants to lay the groundwork for optimum exploitation of the remaining oil and gas resources in the North Sea. Therefore, a stable and long-term framework for the future development must be set up to ensure that the Danish society will benefit as much as possible from the values in the North Sea.

A.P. Møller - Mærsk and the partners of the Danish Underground Consortium (DUC) are responsible for most of the activities in the Danish sector of the North Sea. This report will therefore mainly focus on matters related to A.P. Møller - Mærsk's Sole Concession, even though the report as a starting point concerns the entire Danish sector of the North Sea.

2. Oil and gas activities in the Danish sector of the North Sea¹

The development of the oil and gas activities in the North Sea has by far exceeded expectations made in 1962 when the Sole Concession for the exploration and production of hydrocarbons etc. was granted to A.P. Møller for a period of 50 years. When activities to find oil and gas were started in the 1960s, knowledge of the actual prospect of finding oil and gas in Denmark was scarce. Oil was first discovered in 1966, and oil production commenced in 1972.

¹ Appendix 1 describes the present Danish legislative and financial framework of the activities in the North Sea.

So far, most of the oil discovered in Denmark has been discovered in very dense strata of limestone. When production from these strata began, only very small quantities of the oil found in the strata were expected to be recoverable. For example, 20 years ago, it was estimated that approx. 6 per cent of the oil in the Dan Field could be recovered. Since then, new production methods (water injection and horizontal wells) have been developed enabling recovery of more and more of the oil found in the dense strata of limestone. It is now estimated that approx. 26 per cent of the oil in the Dan Field can be recovered. The same trend applies to the other Danish oil fields.

This has been instrumental in ensuring that companies other than the DUC partners continue to be interested in participating in the oil and gas activities. Today, 25 oil companies have a licence to explore and recover oil and gas in the Danish sector of the North Sea. Ten of these companies have initiated production and sale of oil and gas. DUC, presently composed of Shell (46 %), Texaco (15 %) and A.P. Møller - Mærsk (39 %), is clearly the largest producer. In 2002, DUC accounted for 82 per cent of the total Danish oil production and 92 per cent of the gas production. The remaining part of the oil and gas production came primarily from fields operated by the state-owned company DONG and Amerada Hess.

State revenue from oil and gas activities under the Sole Concession has so far mainly come from corporate taxes. Of the total revenue of almost DKK 80 billion (2003 prices) generated during the period from 1962-2003, 55 per cent originated from corporate taxes, 31 per cent from royalties, 13 per cent from oil pipeline tariffs and 1 per cent from hydrocarbon taxes.

From 2000, state revenue from Danish oil and gas production in the North Sea has increased significantly, mainly as a result of a positive production development combined with high oil prices. During the past three years, annual revenue from taxes and fees has amounted to approx. DKK 10 billion, cf. Table 1.

Table 1: State revenue from the North Sea – 1998-2002 (2003 prices)

DKK million	1998	1999	2000	2001	2002*
Hydrocarbon tax	0	0	0	0	67
Corporate tax	1,940	2,303	6,657	6,578	6,957
Royalties	1,237	944	1,244	2,356	2,160
Oil pipeline tariff/compensatory fee	349	685	1,512	1,168	952
Total	3,526	3,933	9,413	10,101	10,136
Share of DUC partners	100%	97%	96%	93%	93%

*Figures are not final.

Note: Budget accruals concept (payment year)

Stating exactly how beneficial the North Sea oil and gas activities have been to A.P. Møller - Mærsk is difficult. To calculate this, assumptions concerning the actual value of the assets, etc. must be made. If relatively conservative assumptions concerning the value of the company's assets are made, A.P. Møller - Mærsk has in the period 1962-2003 achieved an annual average nominal yield of 16 per cent after tax². During the period, yields have fluctuated significantly. In the first years, there was almost no

² Appendix 2 details the assumptions forming the basis of the profitability analyses. See also the background memorandum by the Danish Ministry of Economic and Business Affairs "Profitability analyses of oil and gas activities in the Danish sector of the North Sea 1962-2003", which will be submitted to the Energy Policy Committee of the Danish Parliament in the near future.

return on the investments. In contrast to this, A.P. Møller - Mærsk has, especially in recent years, achieved very high yields from their North Sea activities.

The terms applying to A.P. Møller - Mærsk are to a large extent governed by the 1981 Contract and the Sole Concession from 1962. According to the protocol of the Sole Concession, talks of a possible extension and the related conditions must be initiated well in advance of the expiry of the Concession. If the parties cannot agree on an extension of the Concession, the Danish State is entitled to take over the existing installations in the North Sea at a price laid down by arbitration in case of dispute. If the State does not want to use the installations, because it does not want to continue recovery after 2012, removal of these can be required.

In addition to DUC, several other companies also currently operate in the Danish sector of the North Sea, as mentioned above. These companies have won rights to oil and gas exploration and recovery through calls for tenders.

Since 1984, five calls for tenders have been issued. In 1997, a so-called "Open Door Procedure" was also introduced for the less attractive Danish areas. Outside the calls for tenders, the Open Door Procedure allows oil companies to apply for licences during an annual opening period from 2 January to 30 September. These new licences grant companies 30-year production licences.

The companies with the new licences face somewhat different terms than DUC. Firstly, the investments were made much later. Production from areas outside A.P. Møller - Mærsk's Sole Concession was not initiated until 1998. Secondly, other licence terms apply to the new licences in several areas, e.g. as regards state participation. The State, for instance, participates in all recent licences through DONG Efterforskning & Produktion A/S, a subsidiary of the entirely state-owned DONG A/S, and in this way gains a share of the oil and gas reserves.

In future, oil and gas companies will also be interested in participating in exploration and recovery activities in the North Sea if the financial terms are reasonable. The fact that many new opportunities to invest in oil recovery are now being offered all over the world also plays a part. This applies, in particular, to the Central Asian countries, which offer far greater potential and far larger fields than the Danish sector of the North Sea.

3. Oil and gas reserves in the Danish sector of the North Sea

There are still valuable oil and gas reserves in the Danish sector of the North Sea. Every year, the Danish Energy Authority publishes an "assessment of reserves", i.e. an assessment of the amount of oil that can be recovered from the known fields with today's technology. According to this assessment, the bulk of the oil and gas reserves is found within the Sole Concession.

The Sole Concession is based on a very long time horizon. Therefore, the Energy Authority's assessment of reserves forms the basis for three production scenarios (low, middle and high) which make various assumptions concerning technological development and new discoveries. The three scenarios are based on a contract solution. This means that the added value generated by concluding a contract, in the form of more efficient production and investment planning, has been included in the projections, cf. Section 5.

The "low scenario" is based on the Energy Authority assessment of reserves that does not include new technology or discoveries.

Historically, these assessments have, however, always underestimated the amount of oil actually produced. This is due to the fact that new discoveries are made and technology is in constant development, cf. Section 2.

The main scenario (the middle scenario) - that formed the basis of the Government's talks with A.P. Møller - Mærsk - takes account of technological development, thus, increasing production by an average of 0.7 per cent annually. This corresponds to an additional production of 125 million m³ oil. At the same time, it is assumed that production from another new, medium-sized oil discovery of 20 million m³ will be initiated around 2012. The total estimated annual average additional production amounts to 1.2 per cent compared with the Energy Authority's latest 20-year forecast for the period 2003-2022. By way of comparison, the period 1990-2003 saw an annual increase in the total oil production from a number of fields within the Sole Concession of approx. 4 per cent in relation to the forecasts of the expected oil production from these fields made in 1990, cf. Appendix 3. According to the middle scenario, the development of new technology and new discoveries are expected to take place at a somewhat slower rate than has been the case during the past 15 years.

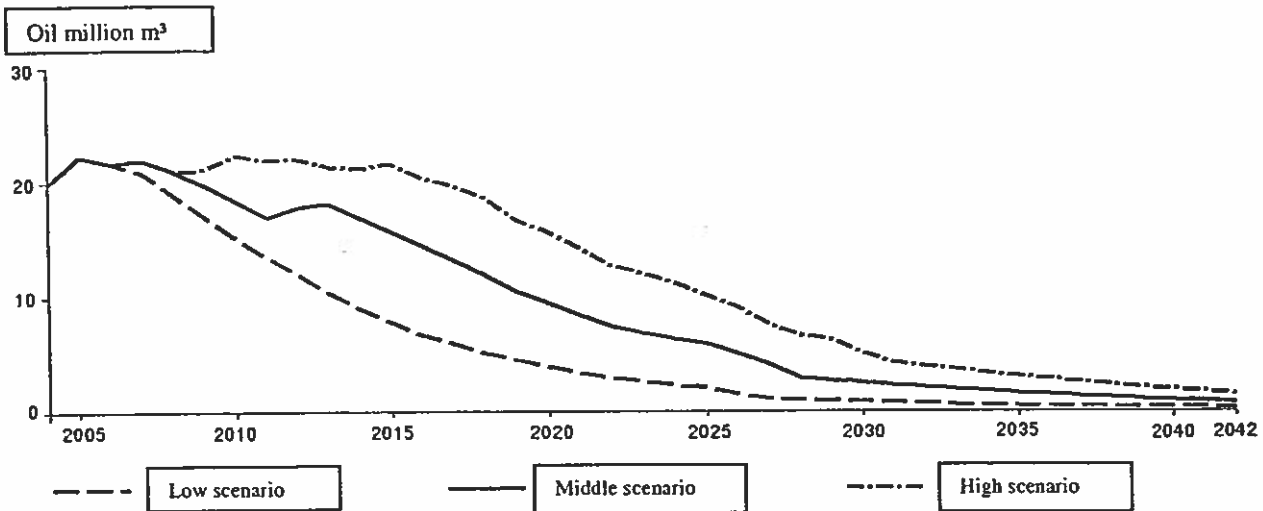
The high production scenario assumes that another medium-sized discovery of 20 million m³ will be made and that faster technological development will take place. This will result in an estimated annual average additional production of 2.1 per cent compared with the Energy Authority's latest 20-year forecast for the period 2003-2022.

The lower rates of increase applied (compared with the historical development) reflect a recognition of the fact that it is becoming increasingly difficult to expand the recovery from the fields in production, just as it is becoming increasingly difficult to make new discoveries concurrently with the continued exploration of the Sole Concession areas.

Moreover, assumptions concerning technological development and new discoveries, the scenarios also include a number of assumptions concerning future investments and operating costs. The assumptions concerning future investments and operating costs are based on historical data and experiences from A.P. Møller - Mærsk's existing fields and other fields outside the Sole Concession. Gradually increasing operating costs per produced oil and gas unit are assumed. Especially towards the end of the period, more water is expected to be recovered together with the oil, which will increase the cost of handling these amounts of water.

Figure 1 shows the expectations of the future oil production illustrated by the three different production scenarios. The total oil production from the areas within A.P. Møller - Mærsk's Sole Concession is expected, according to the middle scenario, to amount to 357 million m³ in the period 2004-2042. Of this, about half will be produced in the period 2004-2012, both years included. By way of comparison, the Danish oil production from 1972, when production was first initiated, to 1 January 2003 totalled 211 million m³.

Figure 1: Official production forecasts for DUC



Production from licensees other than A.P. Møller - Mærsk is assessed to total 43 million m³ oil for the period 2004-2026, of which 32 million m³ oil are expected to be produced in the period 2004-2012. This does not include production from any new licences.

Based on the official middle scenario, the total production value of the remaining oil and gas resources within A.P. Møller - Mærsk's Sole Concession will total DKK 295 billion in the period 2004-2042 at an exchange rate of 6.95 DKK/USD and an oil price of USD 22.4 per barrel from 2004-2010 (from 2011, incrementing by USD 0.4 annually). The future production value is stated in present value. This means that allowance is made for inflation and the possibility of an alternative application of the resources through a return on investment of 6 per cent.

4. State share of values from A.P. Møller - Mærsk's Sole Concession

From 1962 to 2003, A. P. Møller - Mærsk's Sole Concession generated a production value of DKK 309 billion and a total profit of DKK 166 billion (2003 prices). Of this, the Danish State received DKK 78 billion spread over almost the entire period. The state share of the profit has varied significantly during the years. On average, the historical distribution has been 47 per cent to the State and 53 per cent to DUC. In recent years, the state share of the profit has, however, been 40 per cent, cf. Table 2.

Table 2 - 2000-2003 profit from the Sole Concession

DKK billion (2003 prices)	2000	2001	2002	2003	Annual avg. 2000-2003
State profit	9.6	8.9	9.4	7.9	9.0
DUC profit	15.8	12.4	11.5	13.6	13.3
Total profit	25.4	21.4	20.9	21.5	22.3
Distribution State:DUC	38:62	42:58	45:55	37:63	40:60

As regards new licences, international comparisons indicate that the Danish State's share of values from the North Sea with the present rules is above the level in the United Kingdom, but significantly below the levels in Norway and the Netherlands³.

The oil and gas accumulations in the Danish sector of the North Sea represent significant socio-economic values. It is crucial that the Danish State, which owns the accumulations, is guaranteed a considerably larger share of these values in future. This is supported by the following:

- Today, the knowledge of the resources in the Danish sector of the North Sea has been improved compared with the knowledge available when the Sole Concession was granted in 1962, which speaks for a lower risk premium to the involved companies in future.
- Even in recent years, which have seen high production and profit from the North Sea, the State has received no appreciable hydrocarbon tax. A tighter tax system that provides the State with a larger share of the values is therefore called for.
- Compared with Norway and the Netherlands, Denmark has received a smaller state share of the profit from non-renewable oil and gas resources.

Moreover, a number of external framework conditions have changed considerably since the oil and gas activities in the North Sea commenced. Corporate tax has, for instance, been lowered several times over the years without any increases in other taxes and fees on hydrocarbon activities. The interest rate and inflation levels are also significantly lower today than in the early 1980s, which has increased the actual value of the special hydrocarbon allowance.

However, to ensure that society also in future will benefit from the Danish oil and gas resources, it is crucial to have competent companies carry out the exploration and recovery activities in the North Sea. It must still be attractive for the companies to explore and produce in the Danish sector of the North Sea. As part of this, a stable and reasonable financial framework will be created for future North Sea activities. This will create a basis that will allow the companies to adopt long-term strategies and invest with confidence that there are stable conditions for exploration and recovery of oil and gas in Denmark.

5. The contract with A.P. Møller - Mærsk

To follow up on decision no. V 54 of 20 February 2003, the Government undertook talks with A.P. Møller - Mærsk on the possibilities of extending the Sole Concession, which expires in 2012. These talks were based on the Danish Parliament's decision concerning an increase of the Danish State's share of the values related to present and future exploitation of the oil and gas resources in the North Sea.

On 29 September 2003, the Minister for Economic and Business Affairs and the licensees (A.P. Møller - Mærsk A/S and Mærsk Olie og Gas AS) concluded a contract on the specific terms of extending the Sole Concession by 30 years until 8 July 2042 inclusive, cf. Appendix 5.

³ These assessments are based on model calculations of fields. In the UK, the taxation of oil and gas activities is higher for licences granted before 1993.

This contract is contingent on the necessary consent of the Danish Parliament and the Energy Policy Committee of the Danish Parliament and on the adoption of the necessary and implied amendments. The contract also assumes that the new licence will not give rise to objections from the European-Commission. A.P. Møller – Mærsk has made reservations as regards approvals by its board.

The contract contains the main elements stated in Box 1:

Box 1: Main elements in contract with A.P. Møller - Mærsk

30-year extension of Sole Concession

A.P. Møller – Mærsk is granted an extension of the Sole Concession for the period from 1 January 2004 to 8 July 2042. According to the contract, the licensees must continue the active exploration work and continuously report to the authorities on plans for future production and closure of fields. In case of disagreement on the scope or content of the work, the dispute must be settled by arbitration.

State participation

From 1 January 2004 to 8 July 2012 inclusive, the licensees and their partners will pay an annual amount to the Danish State corresponding to 20 per cent of the profit before tax and net interest expenses. With effect from 9 July 2012, the State will participate as partner in DUC. The State will take over a share of 20 per cent of the installations (platforms, processing facilities, pipelines, etc.). The State will not pay for this take-over.

Hydrocarbon tax

With effect from financial year 2004, the special investment allowance, cf. the Danish Hydrocarbon Tax Act, will be reduced to 5 per cent in six years instead of 25 per cent in ten years. As regards investments made before 1 January 2004, the annual hydrocarbon allowance will be reduced from 25 per cent to 10 per cent. The allowance will cease when the investment is ten years old. The hydrocarbon tax will be reduced from 70 per cent to 52 per cent. The field tax will be abolished with effect from financial year 2004. Unused field deficits will be stated by the end of financial year 2003 and will be deducted by 2.5 per cent annually for 2004 and 2005, and 6 per cent annually from 2006 to 2016. The remaining 29 per cent cannot be deducted. The special payback rule of the Hydrocarbon Tax Act will be cancelled with effect from 1 January 2004.

Royalties and oil pipeline tax

The provision concerning payment of royalties in Section 10 (1) of the 1962 Concession will be cancelled as of 1 January 2004. The pipeline tax, cf. the 1981 Contract, will be cancelled with effect from 9 July 2012. With effect from 1 January 2004, the pipeline tax will be set off against the hydrocarbon tax rather than the income basis of the hydrocarbon tax or the corporate tax. Unused allowances from one year can be carried forward to the next year.

Removal costs

DUC and the partners will pay all removal costs. As regards taxes, removal costs will be deducted in the year in which they are paid. If the positive hydrocarbon income is not high enough to enable full utilisation of the allowance when production pursuant to the Concession ceases, the State will reimburse the tax value of the unused allowance. However, the amount reimbursed cannot exceed the accumulated hydrocarbon tax payment less earlier reimbursements in connection with removals under the same provisions.

Compensation rules

The DUC partners will be compensated for the effects of amendments to new acts and other rules specifically affecting hydrocarbon producers in the Danish sector of the North Sea. The compensation will be laid down with a view to restoring economic balance between the State and the licensees and their partners and can only amount to the net benefit achieved by the State through this contract. Any dispute about this matter will be solved by arbitration. A detailed contract on the compensation rules will be made. This will not affect the general taxation rules of the State.

Firstly, the contract creates a stable and long-term framework for DUC with financial terms that are considerably tighter than the former. The contract will give DUC the opportunity to concentrate on the activities in the North Sea for many years ahead. At the same time, an operator change in 2012 will be

avoided. This will make the total profit for distribution between the State and DUC even larger. If A.P. Møller -Mærsk's Concession did not continue after 2012, DUC would, during the period until 2012, supposedly not be able to pursue a long-term strategy involving the implementation of new technology and further exploration. In case of an operator change in 2012, new technology might be implemented later in the process, and the licensees might feel inclined to close the most unproductive fields prematurely.

With the contract on continued activities after 2012, the total profit for distribution between the State and DUC is estimated to become more than DKK 20 billion higher than if the contract had not been concluded.

The contract will also provide the State with more insight into the oil and gas activities under the Sole Concession. As part of the annual report on future oil and gas production, DUC must account for their plans for closure of fields as a basis of discussion with the supervising authority, the Danish Energy Authority. In case of dispute about the closure plans, the contract includes an arbitration clause. According to the contract, exploratory work to discover new oil and gas fields must also be continued. From 2012, the State will be a partner in DUC with an ownership share of 20 per cent.

Secondly, the resources in the North Sea will be used in a way that is beneficial to the economy. Therefore, the state revenue must come from distribution of profits and taxation of profits rather than gross taxes. The State will gain a larger share of the profits through profit sharing until 2012 and will then participate in all ongoing and new activities in the period 2012-2042. The abolition of royalties and from 2012 the pipeline tax⁴ will, at the same time, mean the removal of two gross taxes. In practice, the gross taxes are an extra production cost and may thus lead to lower production and exploitation of marginal accumulations. The gross taxes may provoke closure of the fields earlier than what is considered sensible from an economic point of view. Also in other countries, a trend towards abolishing gross taxes.

Despite a tax rate of 70 per cent, the hydrocarbon tax has so far only given a very small yield to the State. This is mainly due to the current rules concerning a hydrocarbon allowance of 250 per cent over a ten-year period. Consequently, the companies have, in practice, only paid very modest amounts in hydrocarbon taxes due to the heavy investments in the North Sea. The reduced hydrocarbon allowance is one of the cornerstones of the contract, which provides the State with an expanded and more solid tax base and thus increased tax receipts. A hydrocarbon allowance of 30 per cent for new investments is also in line with the current rules in Norway.

The changed allowance rules will significantly neutralise current distortion in the present taxation and will thus create a healthier system from an economic point of view. The broader tax base means that the hydrocarbon tax rate can be reduced from 70 per cent to 52 per cent.

Also the abolishment of the field delineation contributes to a more flexible and efficient organisation of production. Field delineation is the rule that prescribes that each field must be treated separately, as regards both taxes and accounts. The field delineation was mainly justified by the very high hydrocarbon allowance that will be reduced drastically as a result of this contract. Compared with the existing rules, abolishing the field delineation will stimulate the incentive to undertake risky

⁴ In reality, the pipeline tax will be abolished with effect from 2004 owing to the set off against the hydrocarbon tax.

investments in both new fields and new technologies. Moreover, the use of horizontal wells may make it more difficult to separate the fields geographically in future.

As part of the abolition, the parties have agreed on a transitional scheme according to which unused field deficits by the end of 2003 will be deducted by 2.5 per cent for 2004 and 2005, and by 6 per cent annually from 2006 to 2016.

The deficits will be carried forward without any interest. According to the contract, companies will renounce 29 per cent of these hitherto unused field deficits. According to the Danish tax authorities, the transitional scheme corresponds reasonably well to the share of these deficits that the companies would have been entitled to use under the current rules.

When the fields are to be closed and the North Sea is to be cleared, this must take place in a good and environmentally correct way. According to the current rules, the companies are entitled to deductions for their costs related to removal of installations, i.e. in practice, the Danish State pays for having the installations removed through lower tax receipts. The main problem with the current rules, apparently is the fact that the companies cannot utilise the allowance in situations where expenses cannot be set off against positive income, e.g. when a company is closing its final field in the North Sea. This may provide an incentive to close prematurely to benefit from the allowance.

The contract clearly regulates the taxation of removal costs. Costs will be deducted in the year they are paid. If the positive income is not high enough to enable full utilisation of the allowance when production ceases, the State will reimburse the tax value of the unused allowance, however, not more than the hydrocarbon tax paid. In future, the DUC partners must also pay the costs of removing the installations in the North Sea. When the State from 2012 takes over a 20 per cent share of DUC's installations, without any payment, the State will also have to pay 20 per cent of the removal costs.

Thirdly, the compensation rules agreed upon will provide certainty in relation to the financial framework during the contract period. As mentioned, the financial terms have been tightened significantly. The compensation can only make up the net benefit achieved by the State through the new contract. The compensation rules only concern legislation that specifically affects hydrocarbon producers in the Danish sector of the North Sea. Amendments to general Danish or EU legislation, e.g. corporate taxes, the environment, safety or working conditions, etc., will accordingly not be covered by these rules. The specific contents of the compensation rules will appear from a detailed contract that will be prepared and submitted to the Danish Parliament.

Compensation rules are also found in the contracts between DUC and DONG. In this connection, it should be noted that, according to the contract, the DUC partners waive the right to pass on the tighter financial terms to DONG and in this way reduce DONG's profit to the State, which they would otherwise have been able to as regards gas.

6. Financial consequences of the contract

Through the contract, the Danish State will gain a larger share of the values related to the present and future exploitation of oil and gas resources in the North Sea. From 2004 to 2042, the distribution of profit between the State and DUC is estimated to be 61:39 based on specific assumptions as regards production amounts, oil price, etc. This is considered a considerable improvement compared with the average of 47 per cent, which the State has historically received and the 40 per cent the State has received in recent years.

Based on the assumptions made, Table 3 below summarises the financial consequences of the contract between the State and A.P. Møller – Mærsk compared with the historical figures. As regards the entire period 2004-2042, the state proceeds from the areas within the Sole Concession are estimated to total DKK 133 billion (present value) under the contract. The total state proceeds in the period 2004-2012 are estimated to amount to approx. DKK 80 billion (present value).

Table 3 – State proceeds under the contract (in present value)

DKK billion	Historical 1962 – 2003	Contract					
	*)	2004-12		2013-42		2004-2042	
	Total	Total	Annual avg.	Total	Annual avg.	Total	Annual avg.
	----- DKK billion -----						
Total profit	166	139	15.4	81	2.7	220	5.6
State revenue	78	80	8.9	54	1.8	133	3.4
Of this							
- Profit sharing/State participation	0	26	2.9	16	0.5	43	1.1
- Corporate tax	43	32	3.5	18	0.6	49	1.3
- Royalties	24	0	0	0	0	0	0
- Pipeline tax	10	7	0.8	0	0	7	0.2
- Hydrocarbon tax	1	15	1.7	20	0.7	35	0.9
	----- per cent -----						
Distribution State:DUC	47:53	57:43		66:34		61:39	

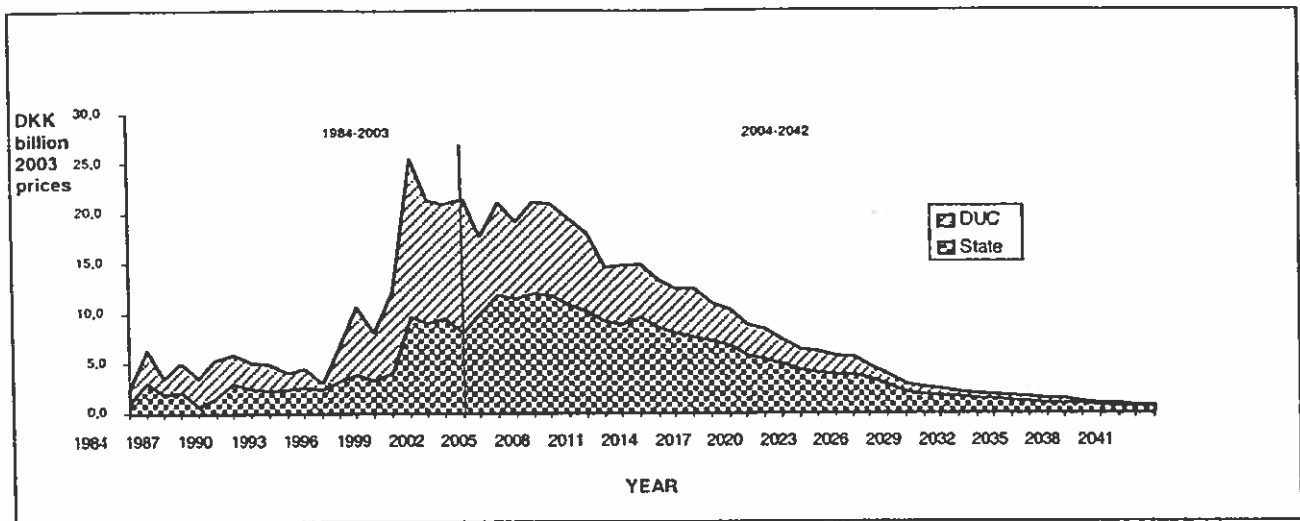
*) 2003 prices

Note: Totals may deviate due to rounding.

With a state share of 61 per cent of the profits from the North Sea in the period 2004-2042, the Danish State's share of the values will, in future, be higher than the state share in the UK and significantly closer to the levels in Norway and the Netherlands. The comparison of the Danish State share with those in Norway and the Netherlands must also consider that fact that especially Norway has much larger fields. Moreover, there are better geological conditions than in Denmark, which make it easier to recover the oil.

Figure 2 shows the development in the total profit for the period 1984-2042. According to the figure, a large profit can be expected from the North Sea oil and gas production, in particular in the period until 2012. After 2020, the profit is expected to be considerably lower as the resources are exhausted and the operating costs of recovering the last oil increase.

Figure 2 - Development in annual profit 1984-2042 (2003 prices)



In Table 3, the proceeds estimates are based on present value. Present-value calculations are most often used in connection with long time horizons when inflation and the fact that the means could have been invested elsewhere, e.g. in Government bonds, must be taken into account, i.e. when something is to be considered an investment. However, present-value calculations do not provide information about the amounts actually received by the State. To get a picture of this, calculations must be based on fixed prices taking only inflation into account.

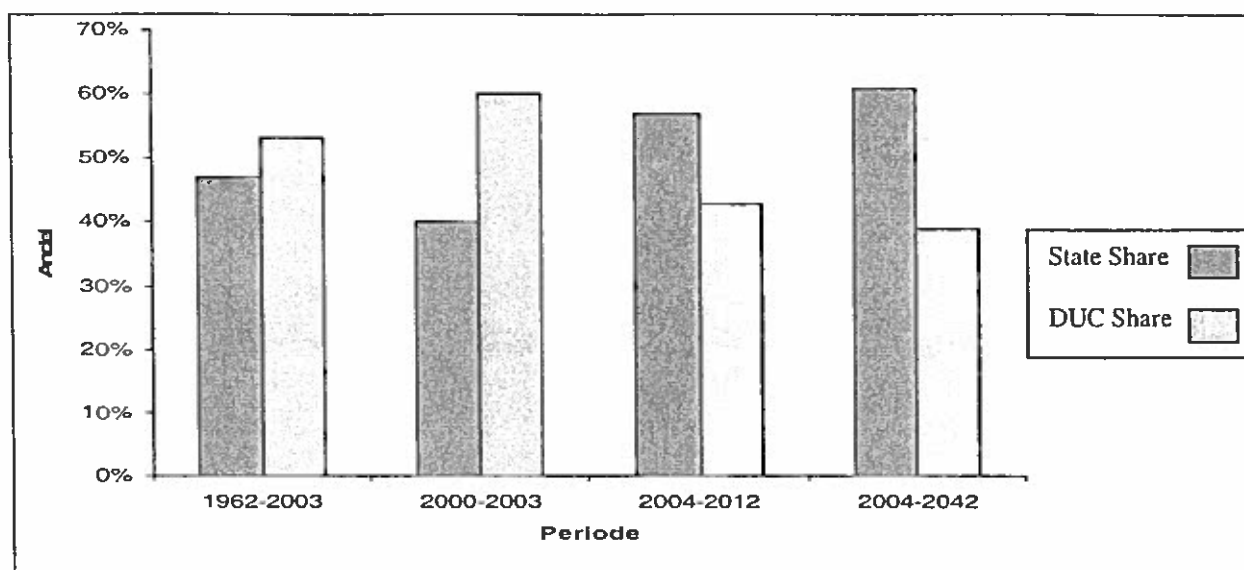
Table 4 shows the state proceeds in the period 1998-2003 in fixed prices compared with the estimated proceeds in the period 2004-2012 under the contract.

Table 4 - State proceeds - historically and in 2004-2012 under the contract (fixed prices)

DKK billion (2003 prices)	1998-2003 Annual avg.	2004	2005	2006	2007-2012 Annual avg.	2004-2012 Annual avg.
State revenue:	7.2	9.8	11.9	11.4	10.4	10.6
- Profit sharing/State participation	-	3.6	4.0	3.9	3.3	3.5
- Corporate tax	4.4	4.3	4.8	4.6	4.0	4.2
- Royalties	1.8	0	0	0	0	0
- Pipeline tax	0.9	0.9	1.0	1.0	0.9	0.9
- Hydrocarbon tax	0	1.0	2.0	2.0	2.2	2.0
Distribution State:DUC (per cent)	40:60					57:43

Figure 4 below shows the historical state share of the profit from the Sole Concession and the expected development of this share over time under the contract.

Figure 4 – Development of the state share of profit



7. Additional state revenue and sensitivity analyses

The value of the contract can be assessed by comparing the state proceeds achieved through the contract with the proceeds achieved if the current rules were to continue until 2012 and an operator was then found through a call for tenders. The terms for the operator after 2012 are assumed to be similar to those applying to new licences. The carryforwards have been made based on the middle scenario for oil and gas production under the Sole Concession, cf. Section 3.

The problem with this type of carryforward is that it is based on income from the hydrocarbon tax, which has generally not generated any revenue. The carryforward does not consider the fact that the present large hydrocarbon allowance of 250 per cent opens up to tax arbitrage in connection with the investments. In practice, this means that the state revenue included in the carryforward with unchanged conditions and an operator change in 2012 overestimates the state proceeds. In the period 2004-2012, DKK 12 billion in hydrocarbon tax receipts are included. According to the tax authorities, these receipts are highly uncertain.

Despite this, calculations indicate that the state proceeds until 2012 will, on average, be DKK 2.4 billion higher, corresponding to additional revenue during the period 2004-2012 of approx. DKK 22 billion, cf. Table 5.

Table 5 - State revenue without and with contract (2003 prices)

DKK billion (2003 prices)	2004	2005	2006	2007-2012 Annual avg.	2004-2012 Total	2004-2012 Annual avg.
Without contract	8.7	9.8	9.6	7.6	73.5	8.2
With contract	9.8	11.9	11.4	10.4	95.6	10.6
Additional proceeds from contract	1.1*)	2.1	1.8	2.8	22.1	2.4

*) Stated per earning year. According to contract, both royalties and profit shares will be due in 2004. When using the Budget's accruals concept for actual payments, the additional proceeds for 2004 are estimated to amount to DKK 3.3 billion, cf. Table 6 below.

Note: In the case without a contract, the taxation conditions are assumed to remain unchanged until 2012. The underlying production development is assumed to differ from the case with a contract, as the DUC partners with a contract must be expected to change their recovery rates so that profits would be as high as possible before the expiry of the licence in 2012.

In present value, the additional proceeds to the State from the contract will amount to approx. DKK 18 billion until 2012. In the period 2012-2042, the contract will also yield significant additional proceeds (approx. DKK 13 billion in present value), cf. Appendix 4.

The contract can also be assessed on the basis of historical figures. Appendix 4 contains a calculation of the additional proceeds that the State would have achieved if the contract had been concluded with effect from 2001 rather than 2004. These calculations are based on actual figures for production, profit, investments, taxes paid, etc. Calculations made in present values show that the State would have achieved additional proceeds of DKK 2.3 billion in 2001 and DKK 2.5 billion annually in 2002 and 2003 by entering into the contract with effect from 2001. This equals the results obtained when calculations are based on future figures.

In total, the different comparisons indicate that the size of the additional proceeds to the State with the new contract is fairly stable, both when the contract is tested against positive carryforwards of the State proceeds and actually realised data.

Moreover, a comparison can be made with the expected revenue in the 2004 Finance Bill. Compared with the 2004 Finance Bill, although based on other amounts and oil prices than the contract calculations, the additional proceeds will amount to DKK 3.3 billion in 2004. Provided that the revenue from corporate tax and hydrocarbon tax, etc. does not change in the budget forecasts of the 2004 Finance Bill, the State's additional proceeds will amount to almost the same in the period 2005-2007, cf. Table 6.

Table 6 – State proceeds under the contract compared with the 2004 Finance Bill

DKK billion (2003 prices)	2004	Avg. 2005-2007
Contract	11.2	11.5
2004 Finance Bill	7.9	7.9
Difference	3.3	3.5

The 2004 Finance Bill assumes a lower production and higher oil price than the contract calculations. Both assume almost the same dollar rate. From a calculation point of view it is assumed that the state proceeds from DUC will make up 93 per cent of the state revenue from all companies in the North Sea. The statement in the table is moreover based on payment year in line with the principles used in the Finance Bill.

Finally, sensitivity analyses in connection with changed assumptions concerning oil price, dollar rate and production have been conducted (see Table 7). According to the table, the state share of the values within the Sole Concession varies between the low and the high production scenario from 58 per cent to 62 per cent. A 20 per cent positive or negative change in the oil prices or the dollar rate will correspondingly cause the state share vary between 63 and 56 per cent.

Generally, the calculations indicate that the state proceeds and share of the profit may vary if assumptions change. This is due to the fact that the average tax rate increases concurrently with increasing profits due to the composed marginal income tax of 73 per cent laid down in the contract. In contrast to the present tax system based on an even higher official marginal tax rate, the contract establishes efficient and higher taxation. Unlike the present system, the new tax base will be far more stable due to the reduced deduction possibilities.

Table 7 – Sensitivity analyses of state proceeds (state share in parentheses)

DKK billion (2003 prices)	2004	2005	2006	2007	2008	Annual avg. 2004- 2012	2004- 2012	2013- 2042	2004- 2042
	----- DKK billion 2003 prices -----					DKK billion present value			
1. Contract for State (middle scenario*)	9.8	11.9	11.4	11.9	11.8	10.6 (57%)	80 (57%)	54 (66%)	133 (61%)
<i>Sensitivity to changed production</i>									
2. As 1, but low production scenario	9.8	11.9	11.5	11.3	10.6	9.6 (56%)	73 (56%)	25 (65%)	98 (58%)
3. As 1, but high production scenario	9.8	11.9	11.2	11.9	11.6	11.4 (58%)	85 (58%)	80 (67%)	165 (62%)
<i>Sensitivity to oil prices</i>									
4. As 1, but oil price -20% (2004-10: 17.9 USD/barrel)	6.2	7.9	7.5	8.0	8.0	7.1 (52%)	53 (52%)	40 (64%)	93 (56%)
5. As 1, but oil price -10% (2004-10: 20.1 USD/barrel)	8.0	9.9	9.5	9.9	9.9	8.9 (55%)	66 (55%)	47 (65%)	113 (59%)
6. As 1, but oil price +10% (2004-10: 24.6 USD/barrel)	11.6	13.9	13.4	13.9	13.7	12.4 (59%)	93 (59%)	61 (67%)	154 (62%)
7. As 1, but oil price +20% (2004-10: 26.8 USD/barrel)	13.4	15.8	15.3	15.8	15.6	14.1 (61%)	106 (61%)	68 (67%)	174 (63%)

Note: A 10 per cent change in the dollar rate will have the same impact on the state proceeds as a 10 per cent change in the oil price. A 10 per cent higher dollar rate corresponds to a dollar rate of 7.65 (instead of 6.95). Historically, the oil price has fluctuated relatively more than the dollar rate.

*) State middle assumptions, e.g. oil price: 22.355 USD/barrel in 2004-10 and then gradually increasing to 36 USD/barrel in 2042 (2003 prices); dollar rate of 6.95; middle production scenario. At the beginning of October 2003, the oil price exceeded 27 USD/barrel.

Compared with the present rules, the contract generally establishes a more stable tax base, which will provide the State with a higher share of the values in the North Sea, regardless of whether the oil price is high or low, or whether it suddenly proves possible to recover far greater amounts from the North Sea than expected based on the information available today. Stability is particularly important, considering the fact that the production from the North Sea has developed far more positively than expected and considering the often drastic oil price fluctuations.

8. Conclusion

In the opinion of the Government, a good and solid contract has been made with A.P. Møller - Mærsk. In general, the contract offers clear improvements on the current rules. The Government finds that the additional proceeds should be spent on reducing public debt and thus increasing the future scope for action.

In connection with the implementation of the contract between the Minister for Economic and Business Affairs and A.P Møller - Mærsk, the Government will submit a draft resolution and the related draft legislation on amendments to the Hydrocarbon Tax Act and the Underground Act. The contract is intended to enter into force on 1 January 2004.

For the other companies with ongoing licences to explore and recover oil and gas in the Danish sector of the North Sea, the amended legislation will not imply changed conditions because the new terms will only apply to new licences. If other companies request changed terms in line with the contract, the Government would be willing to discuss this.

Appendix 1 - Present Danish legislative and financial framework of the activities in the North Sea

Legislative framework

The exploitation of Denmark's underground is regulated by the Underground Act, which contains provisions concerning the granting of licences for the exploration and recovery of hydrocarbons.

The specific terms of exploration and production are laid down in separate licences (concessions) granted by the State to the companies. As regards DUC, the terms are laid down in the Sole Concession of 8 July 1962 granted to A.P. Møller for a period of 50 years. The terms of the other companies are laid down in separate licences granted by the State in connection with the five calls for tenders that have been issued since 1984. Added to this are the licences granted in connection with the Open Door Procedure introduced in 1997.

A material difference between the Sole Concession and the recent licences is that the recent licences were granted through calls for tender where several companies competed for licences for exploration and recovery in a specific area. Moreover, other rules concerning taxation and state participation apply, cf. below.

The Sole Concession, which originally covered the entire Danish area, has been adjusted several times. The most comprehensive adjustment took place 1981 through a contract between A.P. Møller and the Danish Minister of Energy, which returned large areas to the State. The 1981 Contract was concluded on the basis of a political wish to intensify the activities in the North Sea.

As part of the establishment of the EU's internal energy market, the Concession Directive includes common rules as regards the conditions for granting licences for the exploration and production of hydrocarbons. The areas in the North Sea included in A.P. Møller - Mærsk's Sole Concession are, however, exempted from the tender requirements of the Concession Directive. This means that the State may grant a new licence to A.P. Møller - Mærsk or another operator before the end of 2012 without issuing a call for tenders for the areas included in the Sole Concession. A new licence would, in accordance with EU legislation, have to be granted on the basis of objective and non-discriminatory criteria.

Present taxation and state participation

State revenue from the oil and gas activities in the North Sea comes from five sources:

- Corporate tax
- Hydrocarbon tax
- Oil pipeline tax/compensatory fee
- Royalties (production fees)
- State participation

Corporate tax

Like all other companies, the companies in the North Sea pay a corporate tax of 30 per cent. The corporate tax is stated separately for the hydrocarbon activities in Denmark. This means that any deficits from other activities cannot be deducted before payment of corporate tax on hydrocarbon activities. In this respect, the rules differ somewhat from the usual rules concerning the calculation of

corporate tax according to which deficits from some activities may be set off against profits from others.

Hydrocarbon tax

Hydrocarbon tax is a special tax on income from hydrocarbon activities. The hydrocarbon tax was introduced in 1982 with the aim of taxing windfall profits, for example as a result of high oil prices.

Basically, the base of the hydrocarbon tax is the same as that of the corporate tax, though with three important exceptions. Firstly, the income is stated for each field, meaning that the deficit from one field cannot be set off against the profit from another field. Secondly, the corporate tax paid can be deducted. Thirdly, the companies receive a special hydrocarbon allowance of 25 per cent of their investments. The allowance is granted over ten years, i.e. a total of 250 per cent. The hydrocarbon tax is 70 per cent.

Owing to the hydrocarbon investment allowance, a company that invests DKK 1 billion annually will receive an allowance of DKK 2.5 billion over ten years, or DKK 250 million annually. The DKK 250 million will be deducted prior to calculation of the hydrocarbon tax. To this must be added ordinary depreciation on the investment. In total, the corporate and hydrocarbon tax allowances mean that an investment of 1 DKK releases a tax discount of more than DKK 2 (present value), if the investor should otherwise have paid hydrocarbon tax. For a more detailed analysis, please see "Rapport fra Kulbrinteskatteudvalget" (Report from the Hydrocarbon Tax Committee) by the Danish Ministry of Taxation 2001.

However, the Energy Authority must approve the companies' work programmes after talks with the licensees.

Oil pipeline tariff and royalties

All oil producers must pay an oil pipeline tax/compensation fee of 5 per cent of the production value of oil after the deduction of transport costs. The pipeline tax rate payable by the DUC companies is laid down in the 1981 Contract between A.P. Møller and the Danish Minister of Energy. The other companies pay a tax in accordance with the provisions of the Oil Pipeline Act.

Under the terms of the Sole Concession, the DUC companies also pay royalties (production fees) of 8.5 per cent of the total value of the oil and gas production after the deduction of transport costs. As regards all other licences, except the very small Lulita Field, royalties are not payable.

The oil pipeline tax and royalties are deductible in the corporate and hydrocarbon tax base.

State participation

Since the first call for tenders in 1984, the Danish State has participated in all new licences, generally with a share of 20 per cent. The State does not participate in A.P. Møller - Mærsk's Sole Concession.

Appendix 2 - Basis of profitability analyses of the A.P. Møller - Mærsk companies' activities in the Danish sector of the North Sea in the period 1962-2003

The Danish Ministry of Economic and Business Affairs has conducted profitability analyses of the annual cash flows of the A.P. Møller - Mærsk companies. The analyses of the average return for the period 1962-2003 is based on the cash flow stated in a report prepared by the Copenhagen Business School⁵ supplemented with information from the Danish Energy Agency for the years 2002 and 2003.

For 2003, a so-called terminal value is included in the cash flow. This terminal value is equal to the expected value of A. P. Møller - Mærsk's activities in the North Sea. Since this value is not known with certainty, this analysis also calculates the average return for different terminal values. The results of these calculations are found in the following table.

Average rate of return for the period 1962-2003 for different terminal values

Assumed terminal value (DKK billion)	Expected average return for the period 1962-2003
0	16.2 per cent
10	16.4 per cent
14.4	16.6 per cent
30	16.9 per cent
45	17.2 per cent
60	17.4 per cent
100	18.0 per cent

Note: The returns are nominal.

Accordingly, the average return of 16 per cent for the period 1962-2003 is specified for a terminal value ranging between DKK 0 to 10 billion.

The 16 per cent return represents the average nominal return achieved by A. P. Møller - Mærsk after tax in the period 1962-2003. This 16 per cent return can be divided into a so-called risk-free return and a risk premium. A risk-free return is a return that is known beforehand when a contract is entered into. An example of risk-free return would be the return on a government bond. A risk premium is a target for the additional return achieved as compensation for the risk imposed on an investor for making a specific investment.

For the period 1962-2003, calculations show that the average risk premium of A. P. Møller - Mærsk was in the range of 5-9 per cent, depending on whether long-term or short-term interest rates are used⁶.

⁵ "Rentabilitetsanalyse af A.P. Møller-selskaberne i den danske del af Nordsøen i perioden 1962-2001" (Profitability analyses of the A.P. Møller companies in the Danish sector of the North Sea in the period 1962-2001), Copenhagen Business School, 2003.

⁶ The average risk-free interest rates have accordingly implicitly fluctuated between 7 and 11 per cent for short-term and long-term interest rates.

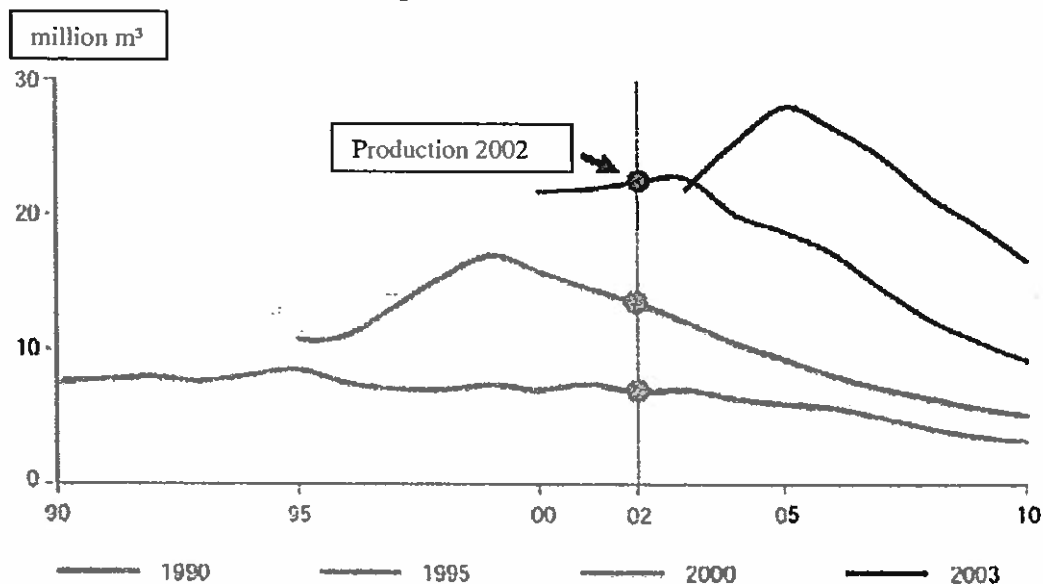
Appendix 3 – Reserves and production forecast

Every year, the Danish Energy Authority calculates the Danish oil and gas reserves and prepares production forecasts on the basis of these calculations. The reserves reflect the amounts of oil and gas that can be recovered by means of known technology from proven accumulations. This definition implies that the reserves may grow because either new accumulations are discovered or new technology is developed which make recovery more efficient. In recent years, Denmark has benefited from both new discoveries and technological development. This positive trend is expected to continue in the next few years.

To illustrate how the reserves and the related production forecasts have grown over the years, the following figure shows the production forecasts for 1990, 1995, 2000 and 2003. The 1990 forecast estimated the 2002 oil production to be 6.8 million m³. The production in 2002 was 21.5 million m³. This means that the actual production was almost three times greater than the estimate from 1990. The 1995 forecast estimated the 2002 oil production to be 13.2 million m³, i.e. 2/3 of the actual production in 2002.

The progress from 1990 to 1995 is attributable to technological development, whereas new discoveries accounted for most of the progress from 1995 to 2000.

Figure 4 – Forecasts for the period 1990-2010



Appendix 4 - Estimated impact on proceeds if the contract had been concluded in 2001

The following shows what a completely identical contract, only valid for a longer period, would have raised if it had been concluded in 2001. This is a hypothetical calculation that disregards the other party's willingness to pay.

The calculation is based on the following assumptions:

- Historical oil prices, dollar rates, production, investments, tax-related accounting figures for 2001 and 2002.
- For 2003, the oil price is estimated at 25 USD/barrel and the dollar rate is at 6.95 DKK/USD.
- From 2004 and onwards, the calculation is based on the oil price of 22.35 USD/barrel forecast by IEA with annual real growth of 0.426 USD/barrel from 2011-2042. The dollar rate is assumed to be 6.95 DKK/USD in each of the following years.
- The current rules are laid down on the basis of a forecast for the total oil production of approx. 301 million m³ for the period 2004-42 with an operator change in 2012. The contract is based on an oil production forecast of approx. 357 million m³ for the same period. The oil production in 2001-03 makes up approx. 52 million m³.

If the contract had been entered into in 2001 rather than 2004, the State would, with great uncertainty and on the basis of the above assumptions, probably have been able to obtain additional proceeds of approx. DKK 10 billion in the period 2001-42. Table 8 provides an overview of the State's total revenue according to the current rules and estimated additional proceeds by concluding the contract in 2001 and 2004, respectively.

Table 8 - State revenue according to current rules and additional proceeds with contract concluded in 2001 and 2004 (DKK billion in present value)

Year	Current rules	Contract	
	Total state revenue	Additional proceeds at conclusion of contract in 2001	Additional proceeds at conclusion of contract in 2004
2001-2003	25.3	7.3	0
2004-2012	62.0	19.7	17.7
2013-2042	40.4	14.3	13.3

Note: According to the current rules, an operator change will take place in 2012. The amounts are stated in present value, i.e. all are discounted with 6 per cent p.a. An amount with a present value of, for example, DKK 2.0 billion will in 2016 become a paid amount of DKK 4.3 billion in current prices.

It should be noted that the additional proceeds are calculated in relation to the current rules yielding hydrocarbon tax. Whether this is at all realistic is very uncertain due to the large hydrocarbon allowances, etc.

It is also important to note that, for the period 2001-03, figures representing historical transactions have been used in connection with investments and taxes, i.e. changes in behaviour that conclusion of the contract in 2001 might have entailed are not taken into account.

Moreover, bringing forward the conclusion of the contract would not only have affected the period 2001-03, but also the proceeds for the following years with an additional total of approx. DKK 3 billion due to the drastically reduced hydrocarbon allowances and the transitional rules concerning field deficits.

In summary, if the contract had been entered into in 2001 rather than 2004, the State would have achieved additional proceeds of approx. DKK 10 billion (present value) for the period 2001-42. According to estimates, these additional proceeds would have been obtained as follows: Approx. DKK 7.5 billion in the period 2001-03, approx. DKK 2 billion in the period 2004-12 and approx. DKK 1 billion in the years immediately following 2012.



Socio-economic aspects of the

● agreement

between

A.P. Møller - Mærsk

and

the state

● regarding an extension of the Sole
Concession for offshore areas in the
North Sea

1. Introduction

In September, an agreement was made to extend A. P. Møller - Mærsk's Sole Concession for areas in the Danish sector of the North Sea, and the Danish government has subsequently introduced a motion to approve the agreement in Folketinget (the Danish Parliament), as well as Bills to amend the Hydrocarbon Tax Act and the Subsoil Act.

The Danish state has the right of ownership to Denmark's subsoil. The oil and gas accumulations in the Danish sector of the North Sea are scarce natural resources that are valuable in themselves. As in a number of other countries, the Danish state has chosen to license private companies to carry out oil and gas production activities, and thus benefit from the know-how and technology possessed by the companies. Licences are granted for a long term (typically 30 years), a reflection of the need for long-term investments in oil and gas production activities. The aim is to derive the greatest possible socio-economic benefit from the oil and gas resources in the North Sea. Thus, licence terms and tax rules are designed so that the companies have a financial interest in investing in exploration and technological development, without this leading to major distortions or depriving the state of an appropriate share.

Under the agreement concluded, the state will obtain a considerably larger share of the profit derived from utilization of the Sole Concession in the North Sea. As from 2004, the state will obtain a 20 per cent profit share/state participation, at the same time as an effective hydrocarbon tax scheme is introduced that reduces the investment allowance from 250 per cent to 30 per cent, thus substantially minimizing distortions. Moreover, the cost-effectiveness of production can be optimized by abolishing the field-based tax assessment and so-called gross taxes, such as royalty and the pipeline tariff. To this comes that the agreement (including the compensation provision) will eliminate the existing uncertainties with regard to North Sea activities, so that long-term investments and plans can be made, which is crucial to effective exploitation of the resources. In the Report on the North Sea from October 2003, a more detailed account is given of the individual elements of the agreement.

When evaluating the economy of the agreement from a socio-economic point of view, the following factors must be considered particularly important:

1. The agreement contributes to optimizing exploitation of the resources in the North Sea from a socio-economic point of view.
2. The revenue generated by the agreement for the state.
3. The agreement is robust (sensitivity analyses).
4. The profit from the activities in the North Sea will be distributed fairly between the state and the Concessionaires, considering that the subsoil belongs to the state (profitability analyses).

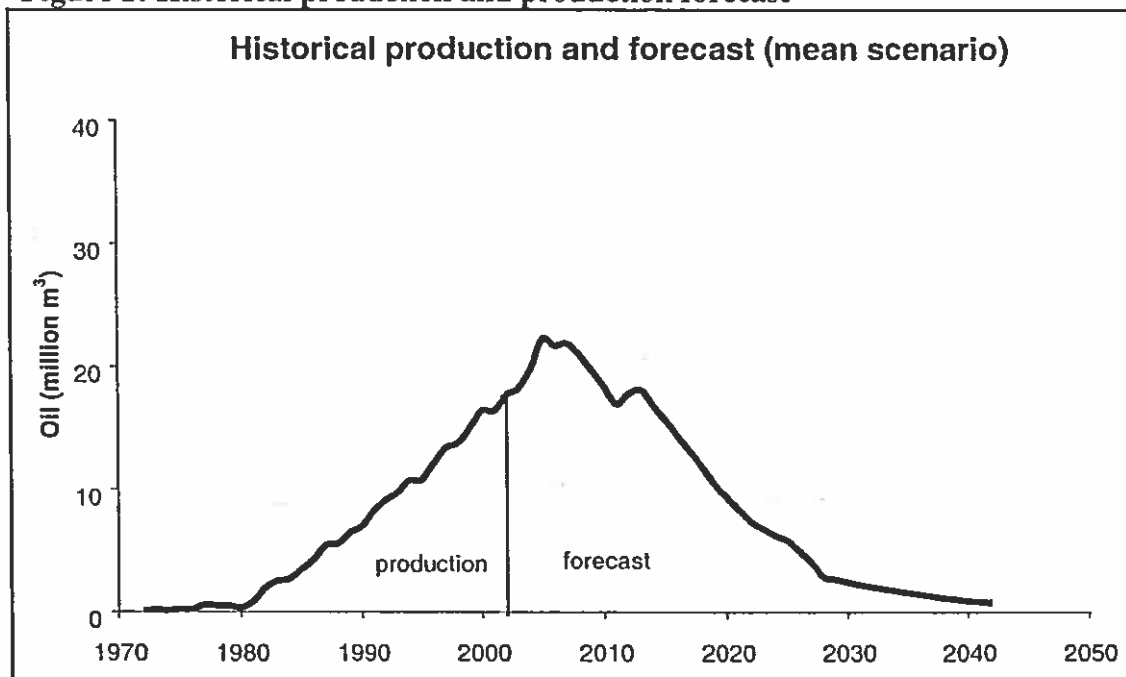
These factors are discussed in more detail below to give a comprehensive view of the agreement from a socio-economic point of view. At the same time, a summary is given of various information and calculations included in answers to questions posed in Folketinget.

2. Oil and gas production in the North Sea

When the search for oil and gas began in the 1960s, scant knowledge about the possibilities of discovering oil and gas in Denmark existed. The first oil discovery was made back in 1966, and oil production was initiated in 1972. However, it was not until the beginning of the 1980s that oil and gas production really got underway. Until then, the activities in the North Sea were relatively limited, both as regards production and investments. Since the beginning of the 1980s, oil production has undergone strong growth, one effect being that Denmark is self-sufficient in oil and gas today. Thus, the development in oil and gas production has far exceeded the expectations from the 1960s.

In the years ahead, production is expected to increase slightly compared to today, but after that, forecasts indicate that the deposits will gradually be depleted, resulting in declining production. By far the largest portion of the remaining resources in the North Sea is thus expected to be produced in the period until 2012 when the existing Sole Concession expires; see Figure 1 below.

Figure 1: Historical production and production forecast



Together with its partners in Dansk Undergrunds Consortium (DUC), A.P. Møller - Mærsk is in charge of the majority of activities in the Danish sector of the North Sea. In 2002, 82 per cent of Danish oil production, viz. 21.5 million m³, derived from DUC. The corresponding figure for gas production was 7.3 billion m³, equal to a 92 per cent share.

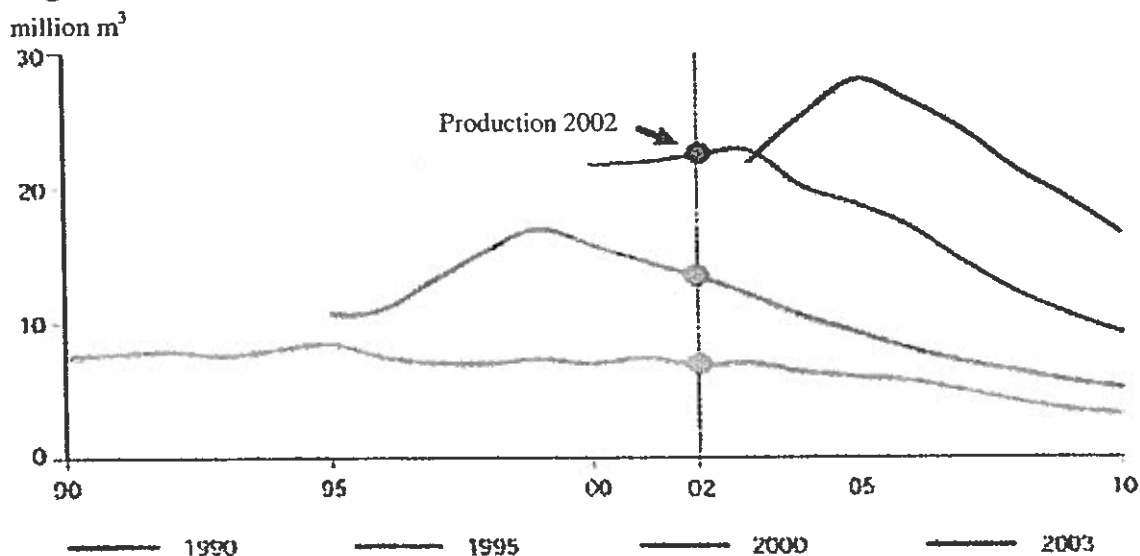
There are two main reasons why so vast resources are produced from the North Sea today: For one thing, investments have continuously been made in developing technology to make it possible to exploit a steadily increasing amount of the oil present in the subsoil. For another, capital has been invested in exploration, with new discoveries continually being made.

The majority of oil discoveries in Denmark to date have been made in very tight chalk layers. When production started from these formations, it was estimated that only very small amounts of oil could be extracted. For example, it was forecast 20 years ago that only about 6 per cent of the oil in the Dan field could be recovered. Since then, new production methods (water injection and horizontal wells) have been developed, which means that an ever increasing share of the oil-in-place can be extracted from the fields today. Therefore, current estimates suggest that more than 26 per cent of the oil-in-place in the Dan field can be recovered.

One method to illustrate the importance of technological development and continuous oil and gas exploration efforts is to compare the production estimates made in the forecasts from 1990, 1995 and 2000 with actual production figures for the relevant years.

The forecast from 1990 estimated 2002 oil production at 6.8 million m³. The production recorded in 2002 was 21.5 million m³. Thus, actual production more than tripled the production figure estimated in 1990. The forecast from 1995 estimated the production for 2002 at 13.2 million m³, i.e. about two-thirds of the actual production recorded in 2002; see Figure 2 below.

Figure 2. Forecasts for the period 1990-2010



2.1 Future oil and gas production

To secure the greatest possible socio-economic benefit from the resources in the North Sea, it is essential to continue improving technology in order to extract increasing volumes of the remaining oil-in-place. Likewise, it is crucial to carry on exploration activity so that new discoveries will continue to be made. Moreover, in step with individual fields being depleted, it is also important to consider how marginal oil reserves are exploited, i.e. whether production continues until the last drop or whether it is discontinued before that.

Naturally, numerous factors determine how technological development, exploration and the exploitation of marginal fields will progress in future. Some of the determining factors are technological advances, oil prices and the dollar exchange rate.

A crucial element is that the agreement will provide a stable framework that eliminates insecurity about the future situation in the North Sea. This is of major importance to the investment climate for North Sea activities, because these investments are very long-term in nature.

Conversely, if no guarantees are given for A.P. Møller - Mærsk's continuation of activities after 2012, it is estimated that the DUC companies will attempt to optimize their short-term proceeds in the period until the Sole Concession expires. In all likelihood, this will mean that DUC will invest less in developing drilling technology, as the investment will have a shorter term to yield a return. Likewise, it must be expected that the relatively cost-intensive investments in new exploration will be minimized, as there will scarcely be time to exploit any new discoveries prior to 2012. Finally, it can be expected that less profitable fields, in which production is upheld today based on expectations for future earnings, will be closed down sooner. A probable consequence is that the remaining oil-in-place in such fields can only be exploited to a limited extent at a later date, because the investments required for resuming production will not be profitable.

The fact alone that the agreement has removed insecurity about the future is thus estimated to have a favourable effect on the future exploration and investment level, and thus on the size of profits.

To this comes that the agreement contains a number of incentives to exploit the remaining resources effectively. Thus, field-based tax assessment will be abolished. This means that income is no longer to be determined separately for each individual field. Instead, an overall calculation of income is to be made for all fields, with total income and expenses being pooled for all fields.

The current tax system means that hydrocarbon tax allowances for marginal fields cannot be transferred to other fields before production from the relevant field is discontinued. All other things being equal, this may prompt an operator to close down a disappointing field prematurely (i.e. before break-even) in order to utilize the allowances by transferring them to other fields that yield a high profit. Moreover, royalty will be abolished, and the pipeline tariff of 5 per cent of the production value will be offset against hydrocarbon taxes until 2012, from which time it will be abolished.

The pipeline tariff is a tax on gross production without any deduction for costs. Royalty and the pipeline tariff have the same effect as costs associated with production and thus also provide an incentive to discontinue production earlier than considered sound from a socio-economic point of view.

Therefore, the state will obtain its future revenue from the following three sources mainly: Profit sharing/state participation, ordinary corporate taxation and hydrocarbon taxation, which is a special form of profit taxation targeted at oil and gas production activities in the North Sea. This means that the state will collect a very large share of its revenue without distorting production and investment decisions.

To serve as a basis for the agreement, analyses were made to show how production will develop in a scenario with an agreement and in a scenario without an agreement. The most important assumptions underlying the analyses are outlined in Box 1 below.

Box 1: Calculation assumptions

Oil price

In all calculations, oil price forecasts are based on projections made by the International Energy Agency, i.e. an oil price of USD 22.355 per barrel today, gradually increasing to USD 36 per barrel in 2042.

Dollar exchange rate

In all calculations, a dollar exchange rate based on the medium-term projections made by the Danish Ministry of Finance has been used, i.e. a dollar exchange rate of DKK 6.95 per USD.

Reserves

The same oil reserves estimates have been used in all the calculations. They are based on the assessment of reserves made by the Danish Energy Authority.

Extension of Sole Concession

In the scenario with an agreement, it is assumed that the term of the Sole Concession will be extended from 2012 until 2042. In the scenario without an agreement, it is assumed that applications for licences will be invited in 2012.

Tax rules

In the scenario with an agreement, it is assumed that the tax rules set out in the agreement will apply, including a reduction of the hydrocarbon tax allowance from 250 per cent to 30 per cent. In addition, the transitional rules laid down in the agreement are assumed to apply, according to which investments already made can be deducted at the rate of 10 per cent per year for up to ten years from the investment was made. In the scenario without an agreement, it is assumed that the present tax rules will apply unchanged until 2042.

State participation

In the scenario with an agreement, it is assumed that the state will receive a 20 per cent profit share until 2012, after which the state will become a partner with a 20 per cent share. In the scenario without an agreement, state participation from 2012 is assumed.

Gross taxes

In the scenario with an agreement, it is assumed that royalty will be abolished from 2004 and that the pipeline tariff will be offset against hydrocarbon tax until 2012, after which it will be abolished. In the scenario without an agreement, it is assumed that royalty will be upheld.

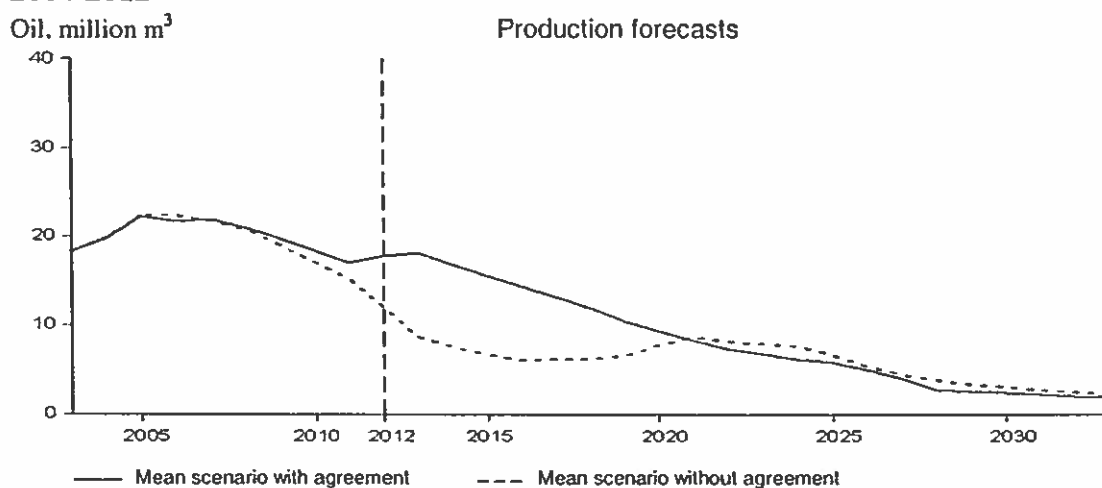
Production, investments and costs

In the scenario with an agreement, a production projection based on empirical data, experience from A.P. Møller - Mærsk's existing fields and other fields not comprised by the Sole Concession has been used to estimate investments and operating costs. In the production scenario without an agreement, the most important difference is that investments will decrease before and after 2012, resulting in insufficient exploration and technological development.

In the scenario with an agreement, it is estimated that the recovery factor will increase by 5 percentage points over the whole period, equal to an annual increase of 0.7 per cent. Moreover, it is projected that production from a new medium-sized discovery will be initiated around 2012. Overall, production is estimated to increase by about 1.2 per cent per year. By comparison, during the period from 1990 to 2003 the combined oil production from specific fields comprised by the Sole Concession increased by an average of 4 per cent per year relative to the oil production forecasts made for these fields in 1990.

In the scenario without an agreement, it is assumed that the lower investment level, particularly around 2012, will slow down technological development to a certain extent, corresponding to an increase in production of 0.5 per cent per year or 3 percentage points over the whole period, combined with an estimated delay in the discovery of a new accumulation; see Figure 3 below.

Figure 3. Estimated oil and gas production with and without an agreement for the period 2004-2012



- 1) Apart from the estimated production scenario, the various projections are also based on estimated investments and costs. A total outline of investments, production, costs, etc. is enclosed as an appendix.
- 2) The calculations are based on an oil price of USD 22.355 per barrel in 2004-2010, gradually increasing to USD 36 per barrel in 2042 (2003 prices) and a dollar exchange rate of DKK 6.95 per USD. At the beginning of October 2003, the oil price slightly exceeded USD 27 per barrel.

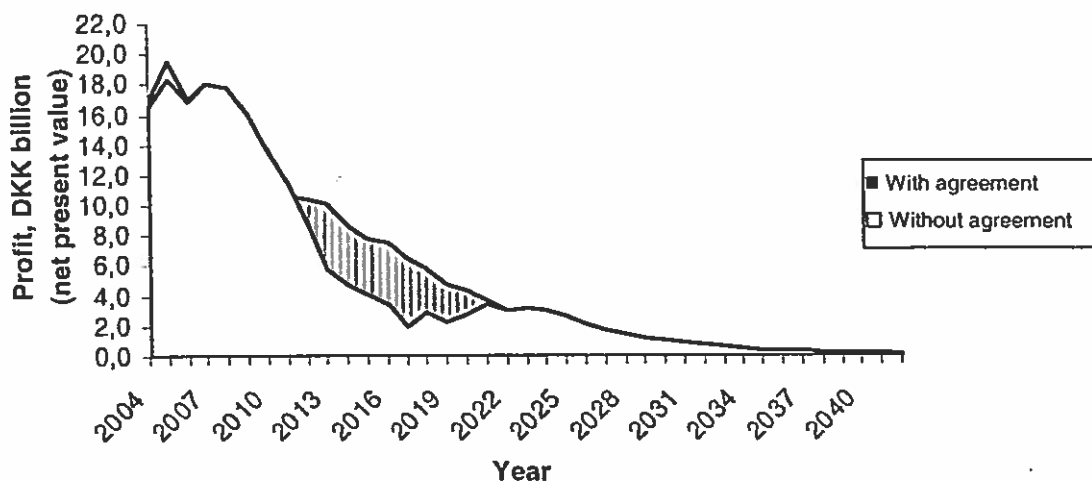
The production projections appearing from the figure indicate the state's mean scenario. The enclosed appendix also shows a high and a low production scenario, based on different assumptions with regard to technological development and the size of new discoveries. For each of these production scenarios, calculations have been made of developments in production with and without an agreement.

2.2 Socio-economic value of concluding an agreement

Based on the production figures shown above in the scenarios with and without an agreement, calculations have been made of the annual profits deriving from oil production under the Sole Concession that are to be distributed between the state and DUC; see Figure 4. The difference in profit between the scenario with an agreement and without an agreement is illustrated by the hatched area between the two curves and amounts to a total of DKK 27 billion (net present value) over the whole period from 2004 to 2042. Ac-

cordingly, the agreement will yield a socio-economic gain of this magnitude due to increased production.

Figure 4: Total annual profits to be distributed between DUC and the state during the period 2004-2042, with and without an agreement



Thus, when assessing the significance of an agreement, it does not suffice to focus merely on how large a profit share the state will receive from production in the North Sea. It is also important to assess whether the agreement contributes to effective exploitation of the oil and gas accumulations in the North Sea. A high profit share for the state, say 70 per cent, will not result in larger state revenues if it leads to a lower investment and production level, and thus less Danish kroner for the state.

3. The state's profit share

With the agreement and based on the mean production scenario, the state will receive, until 2042, an average share of just over 60 per cent of profits from the oil and gas produced under the Sole Concession. Historically, the state share has fluctuated quite considerably, but has averaged about 47 per cent. In recent years, however, it has been down to a mere approx. 40 per cent. Thus compared to the historical share, the tax regime will be tightened considerably.

Although comparison with the historical distribution of the profit may give an idea of the tightening that will follow from the agreement, it would be more realistic to make the comparison with the profit distribution that would result from continuing with the present rules. This is not an easy task, however. The most difficult problem is estimating revenues from the hydrocarbon tax. History shows that hydrocarbon taxation has little or no effect. The companies have been liable to hydrocarbon tax only in rare years, and state revenues from hydrocarbon tax since its introduction in 1982 total less than DKK 1 billion.

For this and other reasons, the Hydrocarbon Tax Committee estimated, in an appendix to its report from 2001, that the DUC companies would only have to pay hydrocarbon tax at an oil price of USD 30 per barrel. In a calculation example, the Committee found the

state share of the profit over the period 2000-2012 to be 36 per cent with the present rules and the above-mentioned price level.

The production forecasts shown above include investments based solely on technical engineering calculations. For example, no allowance is made for the optimum solution from a corporate economy point of view, in light of a 250 per cent hydrocarbon allowance. Hydrocarbon tax payments are thus estimated to total DKK 25 billion. But it is very uncertain that revenues of that magnitude will accrue from hydrocarbon tax. Thus, one of the conclusions made in a memorandum dated 25 October 2000 from the Danish Ministry of Taxation is that "this will provide an incentive for financially rational companies to make sufficiently large investments to ensure that, no matter how high the oil price and how large their oil discoveries, only a situation of exceptionally favourable conditions can make them briefly liable to hydrocarbon tax".

Assuming full hydrocarbon tax payments in the period ahead, the state share will average 45 per cent under the present rules up to 2012 and about 53 per cent over the entire period 2004-2042. Depending on the assumptions with regard to future hydrocarbon tax payments, the anticipated state share of the profit with the present rules will thus fluctuate between 36 per cent and 53 per cent.

Provided that the companies will be liable to full hydrocarbon tax in future, the anticipated added state revenue with the agreement compared with the present rules will be DKK 31 billion in net present value terms over the entire period; see Table 1.

Table 1: Comparison between revenue with the present rules and with the agreement

DKK billion, net present value 2004-2042	Present rules ¹⁾	Agreement
Profit share / state participation	11.2	42.5
Oil pipeline tariff.....	10.1	6.9
Royalty	14.2	0.0
Corporate tax	42.1	49.4
Hydrocarbon tax	24.8	34.6
Total	102.4	133.4

Note: The figures indicating the hydrocarbon tax under the agreement are after set-off of the oil pipeline tariff.

1) Including change of operator, introduction of 20 per cent state participation and abolishment of royalty payments in 2012. The present tax system is assumed to be upheld throughout the period.

In light of the uncertainties associated with the hydrocarbon tax, the table below shows a comparison between state revenues under the agreement and under the present rules, based on different assumptions with regard to future hydrocarbon tax payments. As it appears from the table, the additional state revenue is expected to be at least DKK 31 billion with the agreement.

Table 2: Comparison between state revenue with the agreement and with the present rules, based on different assumptions with regard to hydrocarbon tax payments

	DKK billion net present value 2004-2042
Agreement	133
Agreement without socio-economic benefit (increased production)	112
Present rules with full hydrocarbon tax payments (DKK 25 billion)	102
Present rules, but without hydrocarbon tax payments	77

Note: In order to avoid hydrocarbon tax liability, the companies will have to make investments that reduce their profit. No allowance is made for such investments in the calculations, and the DKK 56 billion can therefore not be taken as an expression of the maximum additional revenue that will be generated with the agreement as against under the present rules.

The present rules and the agreement may also be compared on a historical basis, i.e. by assuming that the agreement had been entered into in 2001 and comparing the revenues actually received by the state in the period 2001-2003 with those that would have been generated under the agreement, using historical figures for production, investments, etc. Such calculations show that the state would have received DKK 7.3 billion more with the agreement between 2001 and 2003 than it actually received over the same period, which, on an annual basis, is close to the additional revenue that the agreement is expected to create in future; see the report submitted to Folketinget.

3.1 Comparison with other tax models

In addition to a comparison with the present rules, the agreement has also been compared with the so-called neutral tax model proposed by the Hydrocarbon Tax Committee for *new* licences. The idea of this proposal is to abolish the hydrocarbon allowance and replace it with an allowance for return on equity, and to allow tax losses to be carried forward with interest, sold, and their tax value to be disbursed eventually. The Hydrocarbon Tax Committee further recommended eliminating royalty and the oil pipeline tariff by offsetting such payments against the hydrocarbon tax and abolishing field-based tax assessment to increase the incentives to exploit marginal fields.

The agreement between the Danish government and A.P. Møller - Mærsk entails a substantial reduction of the hydrocarbon allowance (from 250 per cent to 30 per cent). Furthermore, it abolishes royalty, the oil pipeline tariff and field-based tax assessment. So, the agreement does not differ significantly from the recommendations in the Hydrocarbon Tax Committee's report. The most important difference is that the agreement provides for the government to share in the profit from the existing Concession already from 2004. The enclosed appendices contain a more detailed comparison between the Hydrocarbon Tax Committee's recommendations and the agreement.

The Hydrocarbon Tax Committee took no position on the tax rate issue. It appeared from the Committee's report that the tax rate is a political decision. A comparison between the neutral tax model and the agreement must therefore be based on an assumed tax rate.

The Hydrocarbon Tax Committee did not consider transitional rules either, since its recommendations applied to new licences only. This means that it did not deal with how a

new tax regime was to treat earlier investments made for tax purposes. The background for introducing transitional rules is that previous investments were made in reliance on the present tax rules. Moreover, accumulated losses can only be eliminated by agreement between the parties involved.

Furthermore, the Hydrocarbon Tax Committee did not take a stand on profit sharing/state participation under the existing Concession/licences, since all its calculations related to new licences only. To allow comparison between the neutral tax model and the agreement, two different calculations were therefore made, based on different assumptions with regard to tax rate and state participation. In both, the interest rate for the allowance for normal return on equity is set at 3 per cent.

The first calculation uses the tax rate (52 per cent) and the transitional rules provided for in the agreement and assumes state participation from 2012. It is also based on the production scenario expected to follow from the agreement. The calculation shows that, compared with a neutral tax model, the agreement will generate an extra DKK 3 billion state revenue in net present value terms for the entire period 2004-2042.

The second calculation is based on a 70 per cent tax rate and the same transitional rules as in the agreement, but it assumes no state participation and uses the same production scenario as without the agreement. It would hardly be possible to introduce a neutral tax system involving 70 per cent hydrocarbon tax through an agreement. The production scenario without an agreement therefore seems more realistic. With a hydrocarbon tax rate of 70 per cent it would be difficult also to demand 20 per cent state participation in connection with a change of operator in 2012. A total tax load of this magnitude would probably make it difficult to attract operators.

Overall, the calculations show that the neutral tax model would provide lower revenues in net present value terms over the entire period than the agreement concluded; see Table 3.

Table 3. State revenue for the period 2004-42 with the agreement and with neutral taxation in DKK billion net present value (2003), and a 52 per cent tax rate.

	State revenue 2004-2042, DKK billion net present value
<i>Agreement</i>	133
Neutral tax (52 per cent), with state participation after 2012 with the production scenario assumed under the agreement	130
Neutral tax (70 per cent), without state participation, with a production scenario without an agreement	122

It is not known whether other countries have used a neutral tax regime in their oil industry. Norway has considered a neutral tax model, but without adopting it. It is therefore an unproven regime, and there is no experience with its effects and administration. Furthermore, a neutral tax model like the one proposed by the Hydrocarbon Tax Committee is not consistent with EU rules on state aid. In contrast, the existing hydrocarbon tax model is known and proven. This factor should, of course, also be taken into consideration when evaluating whether the neutral tax model is preferable to the agreement.

4. Sensitivity analyses

The agreement aims to ensure that the state derives a higher and more stable share of the profit from the North Sea resources. A number of sensitivity calculations have therefore been carried out, based on different assumptions as to oil price, dollar exchange rate and production; see Table 4 below.

The agreement is designed such that the effective tax rate decreases if production decreases. Conversely, the effective tax rate increases with increasing income from North Sea activities. This is to provide an incentive to continue production, even if recoverable oil reserves should turn out to be smaller than expected, or oil prices should fall dramatically.

The lowest state share shown in the sensitivity calculations is an average of 56 per cent over the entire period at an oil price 20 per cent below the level assumed in the calculations. Conversely, the state share increases to 63 per cent if the oil price increases by 20 per cent.

Table 4. Sensitivity calculations for state revenue (state share shown in brackets)

DKK billion	2004	2005	2006	2007	2008	Annual average 2004-2012	2004- 2012	2013- 2042	2004- 2042
	----- DKK billion 2003 prices -----						DKK billion net present value		
1. Agreement based on state's mean scenario*)	9.8	11.9	11.4	11.9	11.8	10.6 (57%)	80 (57%)	54 (66%)	133 (61%)
<i>Sensitivities to changed production</i>									
2. As 1, but low production scenario	9.8	11.9	11.5	11.3	10.6	9.6 (56%)	73 (56%)	25 (65%)	98 (58%)
3. As 1, but high production scenario	9.8	11.9	11.2	11.9	11.6	11.4 (58%)	85 (58%)	80 (67%)	165 (62%)
<i>Sensitivities to oil prices</i>									
4. As 1, but oil price minus 20% (2004-10: 17.9 USD/barrel)	6.2	7.9	7.5	8.0	8.0	7.1 (52%)	53 (52%)	40 (64%)	93 (56%)
5. As 1, but oil price minus 10% (2004-10: 20.1 USD/barrel)	8.0	9.9	9.5	9.9	9.9	8.9 (55%)	66 (55%)	47 (65%)	113 (59%)
6. As 1, but oil price plus 10% (2004-10: 24.6 USD/barrel)	11.6	13.9	13.4	13.9	13.7	12.4 (59%)	93 (59%)	61 (67%)	154 (62%)
7. As 1, but oil price plus 20% (2004-10: 26.8 USD/barrel)	13.4	15.8	15.3	15.8	15.6	14.1 (61%)	106 (61%)	68 (67%)	174 (63%)
8. As 1, but oil price of USD 50/barrel in 2004-10 (from then onwards gradually increasing)	31.9	36.5	35.5	36.2	35.3	32.5 (67%)	244 (67%)	140 (70%)	384 (68%)
9. As 1, but oil price of USD 100/barrel in 2004-10 (from then onwards gradually increasing)	71.9	80.9	79.1	80.1	77.7	71.9 (70%)	541 (70%)	297 (72%)	838 (71%)

Note: A 10 per cent change in the dollar exchange rate will have the same effect on state revenues as a 10 per cent change in the oil price. A 10 per cent higher dollar exchange rate corresponds to a dollar exchange rate of 7.65 (instead of 6.95). Historically, the oil price has experienced far larger relative fluctuations than the dollar exchange rate.

*) Mean state assumptions, including an oil price of: 22.355 USD/barrel in 2004-10, gradually increasing from then onwards to USD 36/barrel in 2042 (2003 prices); a dollar exchange rate of 6.95; mean production scenario. At the beginning of October 2003, the oil price exceeded 27 USD/barrel.

5. Does the state get a sufficient share of the profit?

Oil and gas production generates a profit that consists of normal profit and supernormal profit – the economic rent. Various models have been designed for the most appropriate tax treatment of the economic rent. They include state participation, state outsourcing and hydrocarbon tax. The countries producing oil in the North Sea have chosen different models. Like most other countries, Denmark has opted for a “hybrid model” where state revenues are captured using instruments that target the economic rent directly (hydrocarbon tax, state participation, royalty) and supplement the instruments for targeting the remuneration of capital in general, i.e. corporate tax.

With the agreement, the state will continue to collect revenue using a variety of instruments, some of which are intended for taxing capital and others designed specifically to

tax the economic rent. However, the situation has changed significantly as compared to before the agreement, since the state collects a far larger proportion of the revenue using instruments targeted directly at the economic rent, for example, through state participation and effective hydrocarbon taxation.

With the agreement, consensus has also been reached that the economic rent must be distributed in future with a considerably larger share accruing to the state. On the other hand, it is also obvious that the DUC companies are entitled to normal remuneration, including a risk premium, of their capital investments in the North Sea.

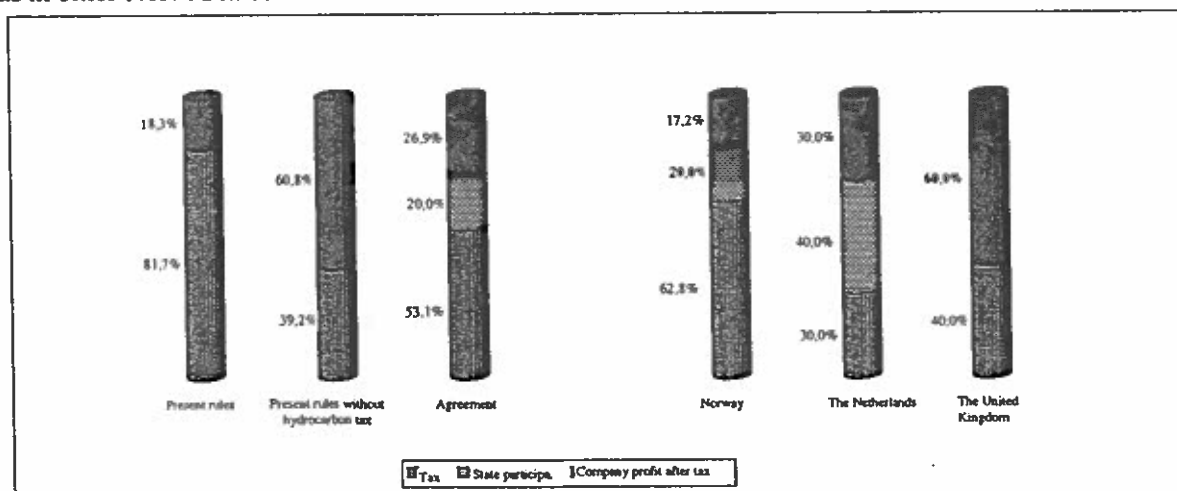
Whether the state share is sufficiently large is a matter of political judgement. As a basis for such judgement, it might be relevant to illustrate, on the one hand, A.P. Møller - Mærsk's profitability under the agreement, and on the other hand, to view the agreement in an international perspective. It should be emphasized, however, that evaluating the company's profitability is associated with major uncertainties.

5.1 The situation in the other North Sea countries

Under the present rules, the Sole Concessionaires are subject to an overall marginal tax rate (the aggregate rate of state taxes and fees, etc., payable out of each extra Danish krone earned) of nearly 82 per cent when in hydrocarbon tax position, as opposed to an aggregate marginal tax rate of about 39 per cent when not.

The agreement provides for an overall marginal tax rate of about 73 per cent, including the state's profit share, when hydrocarbon tax becomes payable. At the international level, this compares with an overall marginal tax rate in Norway of just under 83 per cent, about 70 per cent in the Netherlands and about 40 per cent in the United Kingdom; see the figure below.

Figure 5. Marginal tax rate applying to DUC under the present rules and under the agreement, as well as in other North Sea countries



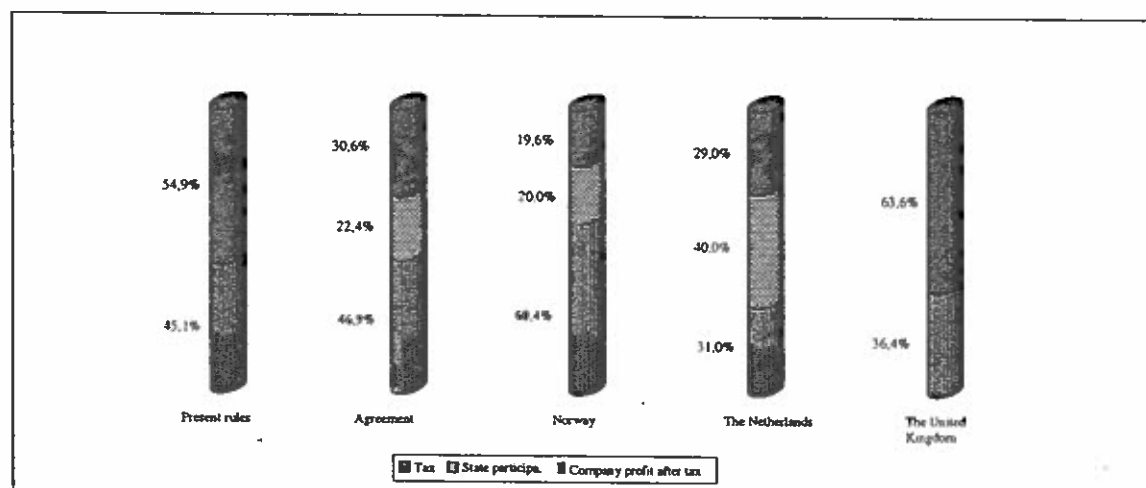
Note. The state participation share also includes tax paid by the state-owned company to the state. In Norway, the rate of state participation varies with each licensing round. The calculation therefore assumes 20 per cent state participation.

In cases where no hydrocarbon tax is payable, the overall Danish marginal tax rate under the present rules is comparable to the overall UK marginal tax rate and considerably lower than the rates in both Norway and the Netherlands.

With the agreement, the overall marginal tax rate is somewhat below the Norwegian level, at the same level as the Dutch and considerably above the UK level.

But the marginal tax rate does not say anything about the actual tax load. The average tax rate is a far better indicator. It illustrates the relationship of taxes paid to income earned. Model calculations show that, once the transitional rules have been phased out, the average tax rate for model fields in Denmark will change from about 45 per cent under the present rules to about 70 per cent under the agreement. This tax level is the same as in the Netherlands, i.e. about 70 per cent, and just below the level in Norway where the average tax rate is about 80 per cent. Again, British rates are considerably lower, the average rate being only about 36 per cent; see the figure below.

Figure 6. Model field calculation of the average tax rate applying to DUC under the present rules and under the agreement, as well as in other North Sea countries



Note. The model fields reflect anticipated future discoveries in Danish territory.

Thus, compared to the other countries operating in the North Sea, the agreement seems to bring the Danish tax rate to the same level as the Dutch, but slightly below the Norwegian level. In this connection, it is important to remember that the Norwegian fields are typically larger, and that the cost of recovering the oil is lower. It is therefore natural that Norway should be able to maintain a slightly higher tax rate.

5.2 The profitability of North Sea operations

Calculating profitability on North Sea operations is difficult and associated with major uncertainties. Analyses made for the period 1962-2003 show a nominal rate of return between 17 per cent and 18 per cent, depending on the assumptions concerning the value of DUC's assets at end-2003. In real terms (i.e. adjusted for inflation), the return was about 11 per cent and the so-called risk premium about 6 per cent. The risk premium is a measure of the added return on a given activity that exceeds the return obtainable on a safe investment, such as government bonds.

However, looking at the return for the entire period 1962-2003 does not give a true picture. Thus, the first 20 years were characterized by very low levels of production and investment. Furthermore, the tax regime applying to North Sea activities during the first 20 years was considerably different, since hydrocarbon tax was not introduced until 1982. A comparison between historical and future rates of return must therefore be based on a period with a reasonably comparable production scenario and tax system. The period 1982-2003 therefore seems an obvious choice; see Figure 1 above.

Between 1982 and 2003, the nominal return was between 18 and 19 per cent, the real return between 15 per cent and 16 per cent, while the risk premium has been calculated at about 8 per cent.

Profitability calculations must be based on various assumptions regarding the value of DUC's assets – the so-called terminal value, i.e. the value of equipment, know-how, etc., that form the basis for North Sea production. The assumed value of DUC's assets is a highly important parameter in calculating the anticipated future return from the North Sea activities. At end-2003, it is expected that DUC's asset mass will be booked at about DKK 30 billion, and that its investments will total about DKK 80 billion (2003 prices).

The financial statements prepared by the DUC companies do not include all investment outlays for research, exploration and development. Nor do they include the value of know-how developed, for example, on horizontal wells and the technological advances made in this connection. Add to this that, naturally, the value of the assets should be judged in the perspective of the potential future income they may generate.

On the other hand, it is also obvious that the value of the assets hardly equals the overall value of the investment input. Some of these investments are of an earlier date, and are unlikely to have the same value today. The value of the assets will therefore be more than DKK 30 billion, but less than DKK 80 billion. Based on the information provided in financial statements etc., the best estimate of the terminal value of the assets is about DKK 60 billion. Based on this estimate, the anticipated nominal return for the period 2004-2042 will be 11 per cent to 12 per cent and the real return between 9 per cent and 10 per cent – considerably less than over the period 1982-2003; see Table 5.

In estimating the future risk premium, a number of uncertainties other than those relating to the terminal value are associated with determining the risk-free interest rate. Historically, the risk-free interest rate varied between 5 per cent and 20 per cent in the period 1962-2003. There is thus a certain probability that the risk-free interest rate will continue to vary considerably also in future.

According to economic projections, however, the risk-free interest rate is expected to stay at an average of about 5 per cent throughout the period 2004-2042. Taking this as a point of departure, the future risk premium may be estimated at just under 7 per cent, i.e. lower than the risk premium accruing to the DUC companies between 1982 and 2003, during which period oil production really got underway. This is an appreciable reduction, also compared with the risk premium obtainable without an agreement, which is assumed to be about 9 per cent for the period 2004-2042.

Table 5. Rates of return and risk premiums for DUC 1962-1981, 1982-2003 and 2004-2042.

Period	Return (nominal)	Average Inflation	Return (real)	Risk premium
----- per cent -----				
1962-1981	16-17	8	5-6	Approx. 3
1982-2003	18-19	3	15-16	Approx. 8
2004-2042	11-12	2	9-10	Approx. 7
<i>2004-2042 (without agreement)</i>	<i>12-13</i>	<i>2</i>	<i>10-11</i>	<i>Approx. 9</i>

Note: The anticipated return for 2004-2042 without an agreement is based on a scenario where DUC is assumed to continue under the present terms up to 2012 and subsequently, after applications for licences have been invited, continue up to 2042 under the terms applying to all other licences. The calculations are based on a terminal value at end-2003 of DKK 60 billion. Anticipated returns and risk premiums for 2004-2042 will typically fall by 0.2-0.3 percentage point, ignoring cash flows occurring after 2025. Due to the discounting method used, there is no simple relationship between nominal return, inflation and real return in the period 1962-1981.

It is difficult to determine whether a risk premium of 7 per cent will meet general expectations in the oil industry. Thus, risk premiums vary considerably from company to company and also reflect the conditions under which the oil is produced. For example, if the oil is difficult to extract, the risk premium will be higher. Moreover, the future risk premium is based on the assumption that DUC will make a new discovery and ensure efficient technology development. However, it is estimated that a 7 per cent risk premium will be within the oil industry's expectations for the future, provided that production conditions remain unchanged.

DONG A/S has explained that in cases where DONG has purchased or made an offer to purchase oil fields or recommended increasing one of its existing shares, the company has used an evaluation criterion of 10 per cent real return after tax (nominally about 12.2 per cent) to determine whether such purchase or increase was commercially interesting. Assuming an average risk-free interest rate of just under 5 per cent for the period 2004-2042, it may therefore be concluded that DONG will, implicitly, demand a risk premium of at least 7 per cent for the period 2004-2042.

Conclusion

With the agreement, the government aims to strike a balance between, on the one hand, securing a reasonable profit share for the state and, on the other hand, maintaining profitability for the companies that carry out exploration and production in the North Sea, in order to ensure the industry's continued interest in investing in exploration, technology development and production. The agreement therefore aims to:

- Utilize the remaining North Sea resources more efficiently, in order to contribute to an increased socio-economic return on investments in the North Sea
- Raise a considerably larger state revenue than possible under either the present rules or alternative tax models
- Create a robust solution with a far more stable tax base
- Ensure that the future return on the North Sea activities is consistent with general industry expectations.

Appendices



Appendix 1A.

Oil Production, million m³, 2004-2042

Year	With agreement			Without agreement		
	Low scenario	Mean scenario	High scenario	Low scenario	Mean scenario	High scenario
2004	20	20	20	20	20	20
2005	22	22	22	22	22	22
2006	22	22	22	22	22	22
2007	21	22	22	22	22	22
2008	19	21	21	21	21	21
2009	17	20	21	19	19	19
2010	15	18	22	17	17	17
2011	13	17	22	15	15	15
2012	12	18	22	11	12	12
2013	10	18	21	8	9	9
2014	9	17	21	6	8	8
2015	8	16	22	5	7	7
2016	7	14	20	4	6	6
2017	6	13	20	4	6	6
2018	5	12	19	4	6	8
2019	4	10	17	4	7	10
2020	4	9	16	3	8	10
2021	3	8	14	3	9	10
2022	3	7	13	2	8	11
2023	3	7	12	2	8	12
2024	2	6	11	2	8	12
2025	2	6	10	2	7	11
2026	1	5	9	1	6	10
2027	1	4	8	1	4	9
2028	1	3	7	1	4	8
2029	1	3	6	1	3	7
2030	1	2	5	1	3	6
2031	1	2	4	0	3	6
2032	1	2	4	0	2	5
2033	1	2	4	0	2	5
2034	0	2	3	0	1	4
2035	0	2	3	0	1	3
2036	0	1	3	0	1	3
2037	0	1	2	0	1	3
2038	0	1	2	0	1	3
2039	0	1	2	0	1	2
2040	0	1	2	0	1	2
2041	0	1	2	0	1	2
2042	0	1	1	0	1	2

Appendix 1B.

Investments, DKK million, 2003 prices, 2004-2042

Year	With agreement			Without agreement		
	Low scenario	Mean scenario	High scenario	Low scenario	Mean scenario	High scenario
2004	4260	4260	4260	4760	4760	4760
2005	3506	3506	3506	4756	4756	4756
2006	4633	4883	4883	5633	5633	5633
2007	2653	2903	2903	2903	2903	2903
2008	2000	2250	3600	1500	1500	1500
2009	1000	1500	2500	250	250	250
2010	500	1000	1250	0	0	0
2011	250	2600	1500	0	0	0
2012	0	1750	1500	0	0	0
2013	0	2000	3850	0	125	125
2014	0	2000	3750	0	125	125
2015	0	2000	3000	0	125	125
2016	0	1000	3000	0	250	250
2017	0	1000	3000	0	250	1600
2018	0	500	2500	0	500	1375
2019	0	500	1500	0	1850	625
2020	0	250	1250	0	1750	1125
2021	0	250	750	0	1000	2600
2022	0	250	750	0	1000	2000
2023	0	0	250	0	500	1000
2024	0	0	250	0	500	1000
2025	0	0	250	0	250	1250
2026	0	0	0	0	250	1250
2027	0	0	0	0	125	1125
2028	0	0	0	0	125	625
2029	0	0	0	0	125	625
2030	0	0	0	0	0	250
2031	0	0	0	0	0	250
2032	0	0	0	0	0	125
2033	0	0	0	0	0	125
2034	0	0	0	0	0	125
2035	0	0	0	0	0	0
2036	0	0	0	0	0	0
2037	0	0	0	0	0	0
2038	0	0	0	0	0	0
2039	0	0	0	0	0	0
2040	0	0	0	0	0	0
2041	0	0	0	0	0	0
2042	0	0	0	0	0	0

Appendix 1C.

Operating costs, DKK per m³*, 2003 prices

Year	With agreement			Without agreement		
	Low scenario	Mean scenario	High scenario	Low scenario	Mean scenario	High scenario
2004	97	97	97	98	98	98
2005	101	101	101	104	104	104
2006	110	110	110	113	113	113
2007	115	114	114	117	117	117
2008	121	119	121	121	121	121
2009	131	130	132	130	130	130
2010	145	144	144	143	143	143
2011	164	166	163	161	161	161
2012	191	194	191	191	190	190
2013	188	192	193	172	173	173
2014	186	194	196	174	175	175
2015	188	200	201	180	181	181
2016	192	206	209	187	189	189
2017	196	212	215	193	196	202
2018	201	218	222	199	205	211
2019	213	230	235	212	223	221
2020	229	244	250	229	243	240
2021	251	265	272	251	265	267
2022	282	294	300	282	298	298
2023	283	291	297	283	297	297
2024	284	291	296	284	298	298
2025	290	294	300	290	303	305
2026	297	300	304	297	310	312
2027	303	305	308	303	318	319
2028	310	311	313	310	321	325
2029	322	323	325	322	333	338
2030	339	339	341	339	346	353
2031	362	362	363	362	366	373
2032	392	392	393	392	397	402
2033	393	393	393	393	396	401
2034	394	394	395	394	398	402
2035	400	400	400	400	403	407
2036	407	407	407	407	408	411
2037	413	413	413	413	413	416
2038	420	420	420	420	420	421
2039	432	432	432	432	432	434
2040	449	449	449	449	449	450
2041	472	472	472	472	472	472
2042	502	502	502	502	502	502

*) including financial costs. When multiplying unit costs by the gas volumes produced (which are stated in '000 m³), such gas volumes must be divided by 1,000.

Appendix 2:

How closely does the agreement follow the Hydrocarbon Tax Committee's recommendations?

The Hydrocarbon Tax Committee's terms of reference were to submit proposals for updating the Danish hydrocarbon tax system to minimize its distorting effects.

In 2001, the Hydrocarbon Tax Committee recommended a neutral tax regime. The Committee submitted a framework model for new licences, but the Committee's report does not contain any proposal that is directly applicable to the existing Concession/licences. In order to use the framework model for the existing Concession/licences, a number of specific problems would have to be solved.

Firstly, appropriate transitional schemes would have to be worked out to ensure that existing rights, such as the right to utilize accumulated, but still unused tax allowances, would not be affected in a way that would conflict with other considerations, for example, the Danish Constitution.

Secondly, the hydrocarbon tax rate would have to be fixed at a level bearing a reasonable relation to the extension of the tax base. The Hydrocarbon Tax Committee explicitly refrained from taking a position on this political issue. The Committee's calculation examples necessarily contain a number of purely calculation technical assumptions, for example, about the hydrocarbon tax rate, but these assumptions are not in the nature of an actual proposal.

Thirdly, it had to be clarified whether the model might cause any specific problems with respect to EU rules, for example, whether the EU Commission would permit disbursement of the tax value of losses carried forward, or whether this would be regarded as state aid.

Although the agreement includes elements of a neutral tax regime and therefore also considerably reduces the so-called distortion loss, it cannot be described as a truly neutral tax system. The table below shows the tax elements under the agreement and under a neutral tax regime, respectively.

Table. Elements of the hydrocarbon tax system of the agreement and of the neutral hydrocarbon tax model

Agreement	Neutral hydrocarbon tax model
<ul style="list-style-type: none"> • Special hydrocarbon allowance to be reduced to 30 per cent overall. • Oil pipeline tariff to be eliminated in practice by set-off against the hydrocarbon tax and to be formally abolished after 2012. Royalty to be abolished from 2004. Tax-base deductions no longer to be allowed. • Hydrocarbon tax rate to be reduced from 70 per cent to 52 per cent. • Pay-back rule to be abolished. • No time limit for loss carrying-forward. • Field-based tax assessment to be abolished. • Transitional rules for hydrocarbon allowance and loss treatment. • Tax value of removal costs associated with decommissioning the last fields to be disbursed when production is discontinued, up to a maximum equivalent to the hydrocarbon tax paid. • Compensatory scheme. 	<ul style="list-style-type: none"> • Special hydrocarbon allowance of 250 per cent overall to be abolished and replaced by a new allowance for return on equity capital. • Gross taxes (oil pipeline tariff and royalty) to be eliminated in practice by set-off against the hydrocarbon tax. Tax-base deductions no longer to be allowed. • Hydrocarbon tax rate? • Pay-back rule to be abolished. • Losses to be carried forward with risk-free interest after tax and to be tradable • Field-based tax assessment to be abolished. • No transitional rules for hydrocarbon allowance and loss treatment. • Tax value of losses to be disbursed eventually. • Possible inclusion of a proviso allowing the Concessionaires/licensees to shift taxes back onto the state (by a set-off).

There are four main differences between the agreement and the neutral hydrocarbon tax model.

Firstly, the agreement carries on the hydrocarbon allowance at an overall rate of 30 per cent and does not replace it by an allowance for return on equity. This is because it has been a major concern in the agreement to ensure continued exploration, and thus the 30 per cent hydrocarbon allowance for (capitalized) exploration costs also applies to companies that have not yet made any discoveries.

Secondly, the agreement does not allow losses to be carried forward with risk-free interest, which means that they lose their tax value over time. However, this is no different from the general tax treatment of losses.

Thirdly, the neutral hydrocarbon tax system introduces an allowance for the return on equity. The agreement does not provide for this allowance.

Finally, the neutral hydrocarbon tax regime provides for eventual disbursement of the tax value of losses. Under the agreement, disbursement is limited to the tax value of the removal costs associated with decommissioning the "last" fields, up to a maximum of the hydrocarbon tax paid.

So, it all comes down to just three differences of nuance, and the hydrocarbon tax system provided by the agreement is thus highly comparable to, though not identical with, a neutral tax regime.



Dato: 8. oktober 2004

J.nr.: 40-1607 KLH/kj

UOFFICIEL OVERSÆTTELSE AF GENERALDIREKTØR FRANÇOIS LAMOUREUX' BREV TIL AMBASSADØR CLAUS GRUBE

Hr ambassadør,

Jeg henviser navnlig til Deres breve af 6. maj og 7. juni 2004, som vedrører aftalen indgået den 29. september 2003 vedrørende udvinding af olie i Nordsøen, og som indeholder visse præciseringer som svar på mine forespørgsler.

Nærværende sag er en opfølgning på Parlamentsforespørgsel nr. 3913/03, som har været genstand for et svar fra Kommissionen, der blev fremsendt til Europa-Parlamentet den 4. oktober 2004. Jeg har derfor den ære at bekræfte Kommissionens holdning, der i det pågældende svar blev udtrykt således:

"Danmark har efter opfordring fra Kommissionen gjort rede for baggrunden for indgåelsen af den aftale, det ærede medlem omtaler, navnlig med henvisning til artikel 4, litra b), og artikel 13 i Europa-Parlamentets og Rådets direktiv 94/22/EF af 30. maj 1994 om betingelser for tildeling og udnyttelse af tilladelser til prospektering, efterforskning og produktion af kulbrinter.

Ifølge direktivets artikel 13 er Danmark, som eneste medlemsstat, således på visse betingelser undtaget fra bestemmelserne i artikel 3 og 5 vedrørende tildeling af tilladelser. Denne undtagelsesbestemmelse skyldes den særlige situation, Danmark befinder sig i, som beskrevet i direktivets præambel (sidste betragtning). Danmark er derfor ikke forpligtet til at anvende artikel 3 og 5 på nye tilladelser, som Danmark tildeler inden den 31. december 2012 for de områder, som opgives den 8. juli 2012 ved udløbet af den tilladelse, der blev tildelt den 8. juli 1962.

Intet i de oplysninger, Kommissionen sidder inde med, lader formode, at der foreligger en overtrædelse af direktiv 94/22/CE."

Denne holdning følger sig således til det svar vedrørende statsstøtte, der blev meddelt til Parlamentet den 15. september 2004 som svar på Parlamentsforespørgsel nr. 3912/03. Det pågældende svar havde følgende ordlyd:

"I fortsættelse af sit svar af 17. februar 2004 skal Kommissionen meddele det ærede medlem, at den har henvendt sig til de danske myndigheder for at få yderligere oplysninger om den danske regerings aftale med A.P. Møller og Dansk Undergrund Consortium, herunder især om den kompensationsklausul, der på visse betingelser udligner en stigning i kulbrintebeskatningen.

På grundlag af de oplysninger, der er fremkommet i forbindelse hermed, mener Kommissionen, at en sådan klausul ikke udgør statsstøtte efter EF-traktatens artikel 87. Under Folketingets debat blev det konkluderet, at den samme klausul også vil blive tilbudt andre eksisterende koncessionshavere. Det kan derfor ikke hævdes, at A.P. Møller og Dansk Undergrund Consortium skulle få en selektiv fordel i forhold til de øvrige koncessionshavere."

I øvrigt vedlægger jeg en dansk udgave af de ovennævnte svar.

Hvad angår tjenestegrene i Generaldirektoratet for Energi og Transport er det ikke min hensigt, således som sagen foreligger på nuværende tidspunkt, at foretage formelle undersøgelser eller yderligere sagsbehandlingsskridt.

Jeg takker Dem for Deres samarbejde med hensyn til behandlingen af det rejste problem.

[høflighedsfrase]



COMMISSION EUROPÉENNE
DIRECTION GÉNÉRALE DE L'ÉNERGIE ET DES TRANSPORTS

Le Directeur général

04 OCT. 2004

Bruxelles, le
TREN/C3/PB/pmm D(2004) 17766

FÆLLESREPRÆSENTATIONEN BRYSSEL		
2 BILAG		
10 OKT. 2004		
400	W.	13-1

Monsieur l'Ambassadeur,

Je me réfère en particulier à vos lettres des 6 mai et 7 juin 2004, relatives à l'accord conclu le 29 septembre 2003 sur l'extraction de pétrole en Mer du Nord et apportant certaines précisions en réponse à mes demandes.

Ce dossier fait suite à la question parlementaire n° 3913 / 03 qui a fait l'objet d'une réponse sur le fond adoptée par la Commission et transmise au Parlement européen le 4 octobre 2004. J'ai donc l'honneur de confirmer la position de la Commission précisée dans cette réponse dans les termes suivants :

« En réponse aux demandes de la Commission, le Danemark a fourni des justifications de la procédure suivie pour conclure l'accord auquel l'honorable parlementaire fait référence, notamment à l'appui des articles 4, (b) et 13 de la directive 94/22/CE du Parlement et du Conseil, du 30 mai 1994, sur les conditions d'octroi et d'exercice des autorisations de prospecter, d'exploiter et d'extraire des hydrocarbures.

En effet, l'article 13 de la directive prévoit l'exonération, sous certaines conditions et exclusivement pour le Danemark, de l'application des articles 3 et 5 de la directive relatifs à la procédure d'octroi des autorisations. Cette exonération est justifiée par la situation particulière dans laquelle se trouve le Danemark, telle que signalée dans le dernier considérant de la directive. Par conséquent, le Danemark n'est pas tenu d'appliquer les articles 3 et 5 aux nouvelles autorisations accordées avant le 31 décembre 2012, pour les aires dont l'autorisation octroyée le 8 juillet 1962, vient à expiration le 8 juillet 2012.

Sur la base des informations dont dispose la Commission, elle n'a pas les éléments qui l'amèneraient à présumer l'existence d'une infraction à la directive 94/22/CE. »

H.E. ambassadør Claus GRUBE
Danmarks Faste Repræsentant ved Den Europæiske Union
Rue d'Arlon 73
B-1040 Bruxelles

Cette position s'ajoute donc à la réponse communiquée au Parlement le 15 septembre 2004, en matière d'aides d'Etat, pour la question parlementaire n° 3912 / 03. Cette réponse était rédigée comme suit :

« Suite à sa réponse donnée le 17 février 2004, la Commission souhaite informer l'Honorable Parlementaire du fait qu'elle a pris contact avec les autorités danoises afin d'obtenir des informations supplémentaires au sujet de l'accord conclu entre le Gouvernement danois et le consortium A.P. Moller et le Dansk Underground Consortium, en particulier en ce qui concerne la clause d'exonération, sous certaines conditions, d'une augmentation éventuelle de la taxation des hydrocarbures.

Sur la base de l'information fournie dans ce contexte, la Commission considère qu'une telle clause ne constitue pas une aide d'Etat au sens de l'article 87 du Traité CE. Durant les débats parlementaires au Parlement danois, il avait été conclu que le même type de clause serait également offert aux autres concessionnaires existants. Par conséquent, on ne peut pas conclure qu'un avantage sélectif ait été accordé à A.P. Moller et au Dansk Underground Consortium par rapport à d'autres concessionnaires. »

Par ailleurs, j'annexe à la présente lettre les versions en langue danoise des réponses aux questions précitées.

En ce qui concerne les services de la Direction générale de l'énergie et des transports, dans l'état actuel du dossier, il n'entre pas dans mes intentions de faire procéder à des devoirs d'enquête ou à des travaux supplémentaires.

Je vous remercie pour votre collaboration dans le cadre de l'instruction du problème posé.

Veuillez croire, Monsieur l'Ambassadeur, à l'assurance de ma haute considération.


François Lamoureux

Annexes : 2

Copie : MM. Chêne, Ristori, Schmitt von Sydow, Jones, Bronchart

E-3913/03DA

Supplerende svar afgivet på Kommissionens vegne
af Loyola de Palacio
(4. oktober 2004)

Danmark har efter opfordring fra Kommissionen gjort rede for baggrunden for indgåelsen af den aftale, det ærede medlem omtaler, navnlig med henvisning til artikel 4, litra b), og artikel 13 i Europa-Parlamentets og Rådets direktiv 94/22/EF af 30. maj 1994 om betingelser for tildeling og udnyttelse af tilladelser til prospektering, efterforskning og produktion af kulbrinter.

Ifølge direktivets artikel 13 er Danmark, som eneste medlemsstat, således på visse betingelser undtaget fra bestemmelserne i artikel 3 og 5 vedrørende tildeling af tilladelser. Denne undtagelsesbestemmelse skyldes den særlige situation, Danmark befinder sig i, som beskrevet i direktivets præambel (sidste betragtning). Danmark er derfor ikke forpligtet til at anvende artikel 3 og 5 på nye tilladelser, som Danmark tildeler inden den 31. december 2012 for de områder, som opgives den 8. juli 2012 ved udløbet af den tilladelse, der blev tildelt den 8. juli 1962.

Intet i de oplysninger, Kommissionen sidder inde med, lader formode, at der foreligger en overtrædelse af direktiv 94/22/CE.

E-3912/03DA

Supplerende svar afgivet på Kommissionens vegne
af Mario Monti

I fortsættelse af sit svar af 17. februar 2004 skal Kommissionen meddele det ærede medlem, at den har henvendt sig til de danske myndigheder for at få yderligere oplysninger om den danske regerings aftale med A.P. Møller og Dansk Undergrund Consortium, herunder især om den kompensationsklausul, der på visse betingelser udligner en stigning i kulbrintebeskatningen.

På grundlag af de oplysninger, der er fremkommet i forbindelse hermed, mener Kommissionen, at en sådan klausul ikke udgør statsstøtte efter EF-traktatens artikel 87. Under Folketingets debat blev det konkluderet, at den samme type klausul også vil blive tilbudt andre eksisterende koncessionshavere. Det kan derfor ikke hævdes, at A.P. Møller og Dansk Undergrund Consortium skulle få en selektiv fordel i forhold til de øvrige koncessionshavere.

THE PERMANENT REPRESENTATION OF DENMARK
to the European Union
Brussels

Hjemmet
GENM: Lars N. Andersen
ENS: Peter H. Ege
Peter P

8/604

Director General, Mr. Francois Lamoureux
DG TREN
European Commission
Rue de la Loi 200
1049 Bruxelles

PAR PORTEUR

Enclosure

File
400.W.13-1.

ACCUSÉ DE RECEPTION		Rue d'Arbou 73 1040 Bruxelles Telefon (02) 233.08.11 Telefax (02) 230.93.84 E-mail: brunp@um.dk Telex 64.434 DANREP B
NOM (en caractères d'imprimerie):	COMMISSION EUROPEENNE COURRIER CENTRAL	
REÇU LE	date: 08.06.2015	
SIGNATURE	O.K. GUNS Jean	

largo
Preped.

7 June, 2004

Subject: Tren/C3/PB/bg D (2004) 1549 - The agreements concerning the future regime for oil and gas activities carried out by Danish Underground Consortium in the Danish part of the North Sea.

Dear Francois,

In continuation of my previous letter on the above subject I would like to elaborate on two points.

First, the agreement is a new agreement which has been drawn up in the form of an amendment to the Sole Concession from 1962. However, this question of form has no material impact as the relevant terms have been brought in line with the results of the bidding rounds that have taken place with regard to comparable areas on Danish territory.

Thus, the new agreement contains major changes to the economic terms including state participation.

There are two major reasons why it was decided to draw up the new agreement in the form of an amendment to the Sole Concession.

First, the changes concerning the economic conditions shall have effect from 1 January 2004, even though the Sole Concession will not expire until 2012. Second, the areas covered by the concession after 2012 will - with an insignificant supplement in accordance with the existing geometric division of the Danish territory - only be producing fields that must be delineated in accordance with the - rather complex - terms of the Sole Concession.

The second point I would like to mention is the question of the time-frame of the agreement.

The Danish oilfields are characterised by the most difficult properties (eg. low permeability) in the North Sea and long timeframes are required to exploit the fields properly. As experience has shown the Danish oilfields require the use of new and advanced technology to safeguard the best ultimate recovery of oil.

Even those fields under the Sole Concession that have been producing for quite a long time have production profiles indicating that production can - and should - go on for many years to come. However, the continued production often requires major investments in new and improved production facilities, wells and re-injection systems.

As A.P.Møller/DUC have undertaken obligations to continue exploration activities the timeframe must also be sufficient for the development and exploitation of new fields.

The 30 year extension is equal to the period normally given in licenses/concessions (in accordance with section 13 of the Danish Subsoil act) to produce hydrocarbons. It allows the licensees to complete their production activities in the most efficient manner from both a technical and economical point of view. An extension of similar length, concerning a producing oil field, is known from the Norwegian part of the North Sea. In 1994 the concession for the Ekofisk oil field was extended to 2028.

The Sole Concession requires areas to be relinquished when production in that area ceases. Thus the licensees will only retain such areas where production is ongoing. It is therefore expected that only smaller areas will be retained for the total period until 2042.

Finally I can inform you that the existing Sole Concession as of 1. January 2004 covers 1.3 per cent of the Danish exclusive economic zone (1854 km² of app. 148,000 km²). From 2005 the area will be further reduced. The reduction will depend on the area covered by producing fields at that time.

Whenever production from a field ceases after 2012 the area will be further reduced.

Yours sincerely,

Claus Grube
Ambassador, Permanent Representative

DANMARKS FASTE REPRÆSENTATION

ved den Europæiske Union
Bryssel

Europa-Kommissionen
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PAR PORTEUR

Bilag
6+13+1+2+4

Journalnummer
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North Sea Oil Tax Regime CP 17/04 – Denmark

Vedlagt fremsendes Energistyrelsens brev indeholdende svar til Kom-
missionen vedr. ovenstående.

P.A.V
E.B

René Frisdahl Jensen
Økonomi- og Erhvervsråd


DANISH ENERGY AUTHORITY

European Commission
Competition DG
Brussels

Att.: Jorma Pihlatie

11 May 2004
File no.: 010104/10004-
0002
Ref.: .

Subject: North Sea Oil Tax Regime CP 17/04 - Denmark

Dear Sir,

By letter of 16 April 2004 the Commission asked to be provided with written clarification on a number of further issues. Please find below the answers to the Commission's questions.

1. **The Commission would like to know how the conditions for granting the hydrocarbon exploration licences are established in Denmark, what the conditions introduced in 1980s were and why they were different from the conditions provided earlier to DUC/APM (i.e. new licensees had a state participation of 20% while there was no state participation in DUC/APM). What is the legal basis for establishing the conditions?**

The Danish Act on the Use of the Danish Subsoil (Act No. 293 of 10 June 1981 as amended) is enclosed in an English translation of the Consolidated Act of 11 June 2002. The minor adjustments, which have been inserted subsequent to the 29 September Agreement, are not included in this version.

The Act stipulates some fundamental conditions for exploration and production licences in sections 5-11 and 13-22 (e.g. maximum duration, obligation to carry out activities in a safe and appropriate manner etc).

The Act also outlines the type of economic terms (eg. State participation, royalty, areafee) which may be included in the licenses, as supplement to regular and special taxation (eg. corporate tax, hydrocarbon tax). The type of economic terms are, however, stipulated in each licence, and normally decided upon before each bidding round - in exceptional cases when no bidding round has taken place - after negotiations with the licensee.

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**MINISTRY OF ECONOMIC
AND BUSINESS AFFAIRS**



DANISH ENERGY AUTHORITY

The Minister for Economic and Business Affairs will issue new licences or prolong or amend existing licences only after having obtained the approval of a Committee of the Danish Parliament (cf. section 6 of the Act).

When the Sole Concession was granted to APM/DUC in 1962 no deposit of hydrocarbon deposits had been found on Danish territory. The first licence for hydrocarbon exploration had been issued in 1935 but neither this licensee nor his successors had had any positive results. In 1959 the last of these licensees, ESSO, gave up the licence.

The terms of the Sole Concession of 1962 were equal to the terms of the previous licences. These terms reflected the high risk involved in exploration on the Danish territory, and they were in line with the terms usually applied for comparable areas at that time.

The Government Take therefore consisted in a royalty levied on the value of any production and no State participation was foreseen.

The Act of 1981 concerning the Use of the Danish Subsoil meant a modernization of the older act. As the Act did not alter the terms of the Sole Concession which covered hydrocarbons on the whole of the Danish territory the Act had, however, little immediate effect:

The Agreement of 19 May 1981 with APM/DUC provided for the gradual relinquishment of most of the Danish territory.

When considering the terms to be offered in bidding rounds for the relinquished areas the Danish Government and Parliament gave priority to encouraging efficient exploration. Therefore the extent of the exploration programmes offered by applicants would be an important criterion.

The developments in other North Sea countries had proven that State participation was a more suitable form of Government Take than royalties.

Therefore a State participation - via the state-owned company DONG - of (normally) 20% was introduced as a firm condition for new licences in the Danish bidding rounds in the 1980s and 90s. The lower percentage than in Norway took into consideration that the chances of finding major deposits are smaller in Denmark.

However, the terms of the Sole Concession could not be changed before the expiry in 2012 other than by mutual agreement. The Agreement of 29 September provides for the Sole Concession to come in line with the modern licence terms with effect from 1 January 2004.



DANISH ENERGY AUTHORITY

2. The Commission would like to know what the relation between the Sole Concession and the tax regime is. Since we distinguish between these two issues - concluding a concession agreement (which is a private law issue) and introducing the tax regime (a public law issue) - we would like to know why the new hydrocarbon tax regime of 1/01/2004 was not made equally compulsory for DUC/APM and any other licensees.

and

3. The Commission understands that the taxation is at the sole competence of the Danish State and the hydrocarbon tax regime in Denmark has been stipulated by the Hydrocarbon Tax Act. Do the Sole Concession agreement and other licences granted provide a restriction for Denmark to change the tax rules? Is Denmark always obliged to have an agreement with licensees before changing the tax system applicable to them?

Under Danish law a licence for the exploration and production of raw materials from the subsoil is in principle considered to be an administrative act and not a contract. As such licences contain many contractual aspects the result is, however, that in a context like the present one the licences may be considered in the same manner as contracts.

It is and has always been the firm policy of the Danish Governments that the power of the Danish Parliament to change existing tax regimes should not be restricted by the terms of the licences granted. It is therefore not necessary to evaluate whether this result also follows from the provisions of the Danish Constitution.

Though there has been made no promises that existing tax regimes will remain unchanged any changes have to be considered from legal and commercial as well as political points of view.

The legal questions arise in distinguishing taxation from expropriative measures in breach of the protection of property provided by article 73 of the Danish Constitution. A key condition of taxation is that the regulation must be of a general nature. If a tax law applies only to a few companies, e.g. APM/DUC, it is for the authorities to demonstrate that the position of these firms from a fiscal point of view is so much different from others that the same rules shall not apply.

When the companies agree to a change of tax regime - as is the case with regard to APM/DUC and other licensees opting to follow the new taxation system - there is no problem in regard to article 73 of the Danish Constitution.



DANISH ENERGY AUTHORITY

The commercial aspects to be taken into consideration when contemplating a compulsory change of tax regime stem from the fact that the applicants for a licence have based their offers on calculations of their expected earnings after tax according to the legislation in force at the time of the offer.

Like all other enterprises the licensees must be prepared for later changes in legislation which are either applicable also to others than hydrocarbon producers or which are motivated by developments that were not foreseeable at the time when the licence was granted.

Compulsory changes to the hydrocarbon tax regime which are not founded in unforeseen new situations are likely to make the licensees uneasy with regard to the possibilities of further compulsory changes in the future. This may entail negative commercial consequences for the State in two respects:

First, existing licensees may be reluctant to invest in development and production on existing licences.

Secondly, the interest in acquiring new licences in future Danish bidding rounds may diminish. The result will be less favourable terms for the State.

For these reasons the political decision by the Danish Government and Parliament has been not to force a new hydrocarbon tax regime upon existing licensees.

4. **What are the reasons why the new licensees, starting after 1/01/2004, are granted less favourable conditions than the existing licensees (except DUC/APM) which started their activities from 1986 until 2003?**

The old hydrocarbon tax system has proven unsatisfactory.

Not only has it generated almost no revenue for the State but it invites licensees to make investments that are not profitable on a before-tax basis.

Therefore the decision has been to introduce the new system with regard to all licences where the considerations mentioned in the answer to questions 2 and 3 do not lead to maintaining the old regime.

New applicants will be able to calculate their offers on the basis of the new tax system and therefore there is no reason not to let the new system apply to them.



DANISH ENERGY AUTHORITY

5. **Appendix I to the Report to the Danish Parliament, page 16, indicates that the oil pipeline tariff for DUC/APM is provided in the contract between APM and Danish Minister of Energy while for the other licensees in the Oil Pipeline Act. Why is there such a distinction and have the conditions and rates always been the same?**

The rules applicable to APM/DUC with regard to the oil pipeline are part of the 19 May 1981 Agreement which also encompassed relinquishment of most of the area covered by the Sole Concession and many other issues.

In the negotiations in 1981 APM expressed fear that the Government might discriminate against APM/DUC when distributing costs between APM/DUC and new licensees and when granting exemptions from the obligation to use the pipeline. Therefore APM/DUC insisted that there should be a contractual element that would enjoy some protection also against future changes of the pipeline act.

Besides small differences in the tariff calculation method there are no real differences between the situation for APM/DUC and other licensees with regard to the oil pipeline and the general conditions have remained unchanged. Obviously the amounts payable have changed over time and the detailed (and complex) regulations have been adapted to developments (e.g. new technology, more producing fields etc.).

6. **Is field delineation part of the previous tax system and is it abolished from 1/01/2004 only for DUC/APM, but not for the other existing licensees?**

The old tax system attaches fiscal consequences to the geographical delineation of a hydrocarbon field which must be made according to the provisions of the Sole Concession as well as other licences in order to maintain the right to the field.

These consequences are abolished in the new tax system.

Existing licensees that do not opt to be governed by the new system will still be subject to the fiscal consequences of field delineation in the old system.



DANISH ENERGY AUTHORITY

- 7. We have attached a set of tables comparing the different types of licensees before 1/01/2004 and after. We would appreciate if you could confirm whether the information included in the tables is correct.**

The comments on the tables attached to the Commission's letter are shown in the enclosed revised version of the tables. Changes have been marked in grey zone.

Yours faithfully,



Peter Helmer Steen

COMMENTS ON SCHEDULE ATTACHED TO LETTER OF 16 APRIL 2004 FROM DG Competition
 CHANGES MARKED IN GREY

Bt. 30/12/2003	Sole Concession	Other existing licensees	Other companies
Corporate tax	30%	30%	30%
Hydrocarbon tax	70%	70%	N/A
	Allowance of 25% of the investment made by the company. Granted over 10 years i.e. a total of 250%.	Allowance of 25% of the investment made by the company. Granted over 10 years i.e. a total of 250%.	
Royalties	8,5% (Deductible in corporate and hydrocarbon tax base)	Only applicable to 2 nd round licensees (1986) 1000 bbl/day 0-5 2% 5-20 8% 20- 16%	N/A
Pipeline tax/ Compensation fee	5%	5% Deductible in the corporate and the hydrocarbon tax base.	N/A
	Provided in the agreement between DUC and the Danish government.	Provided in the Oil Pipeline Act.	
	Tax base is the production value of the oil after the deduction of transport costs.	Tax base is the production value of the oil after deduction of transport costs.	
	Deductible in the corporate and in the hydrocarbon tax base.	Deductible in corporate and in hydrocarbon tax base.	
20% share of the capital	NO	YES	N/A

**COMMENTS ON SCHEDULE ATTACHED TO LETTER OF 16 APRIL 2004 FROM DG Competition
CHANGES MARKED IN GREY**

AFTER 1/1/2004	The Sole Concession	New Licensees starting After 1/1/2004	Other existing licenses	Other Companies
Corporate Tax	30%	30%	30%	30%
Hydrocarbon Tax	52% Allowance of 5% of the investment made by the company. Granted over 6 years i.e. a total of 30%.	52% Allowance of 5% of the investment made by the company. Granted over 6 years i.e. a total of 30%.	70% Allowance of 25% of investment made by the company. Granted over 10 years i.e. a total of 250%.	N/A
Royalty	NO As regards investments already made before 1/01/2004 allowance is reduced to 10% (previously was 25%). Will cease when the investment is 10 years old.	NO	2nd round licenses (1986) 1000 bbl/day 0-5 2% 5-20 8% 20- 16%	N/A
Field delineation	Abolished	Abolished	YES	N/A
Pipeline tax/Compensation fee	5% until 19/07/2012 Provided in the agreement between the Government and the Danish Government Tax base is the production value of the oil after deduction of transport costs Set off against the hydrocarbon tax and non-deductible in the	5% until 19/07/2012 Provided in the Oil Pipeline Act Tax base is the production value of the oil after the deduction of transport costs Set off against the hydrocarbon tax and non-deductible in the	5% Provided in the Oil Pipeline Act Tax base is the production value of the oil after the deduction of transport costs Deductible in the corporate and hydrocarbon tax base	N/A

	corporate and hydrocarbon tax base (until 8/07/2012 - 30% of the corporate tax base before tax and without deduction of nonfinancial costs) After 9/07/12 - state participation of 20%. NB: State will not pay for the take-over	deductible in the corporate and hydrocarbon tax base YES	YES	N/A
20% share of the capital				



DANISH ENERGY AUTHORITY

European Commission
Energy and Transport DG
Brussels

Att.: François Lamoureux

29 April 2004
File no.: 010104/10004-
0002
Ref.: SF

Subject: Tren/C3/PB/bg D (2004) 1549 - The Agreements concerning the future regime for oil and gas activities carried out by Danish Underground Consortium in the Danish part of the North Sea.

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MINISTRY OF ECONOMIC
AND BUSINESS AFFAIRS

Dear Sir,

By letter of 1 April 2004 the Commission has asked a number of questions regarding the above-mentioned subject. Please find below in section 2 and 3 the answers to the Commission's questions. Before addressing the specific questions raised by the Commission, the Danish Government, however, finds it useful to give an account of certain key elements, which are essential to understand the background to the 29 September Agreement and subsequent agreements (section 1):

1. The background to the 29 September Agreement and subsequent agreements

When the Sole Concession was awarded in 1962, it comprised the entire Danish territory. However, by Agreement of 19 May 1981 (part of appendix 4 to the "Memorandum on the agreements concerning the future regime for oil and gas activities carried out by Danish Underground Consortium in the Danish part of the North Sea", hereinafter "Memorandum"), the rights concerning the major part of the Danish territory were relinquished.

The Agreement of 19 May 1981 only allowed APM/DUC to retain fields that were already producing or would be developed within a limited time as well as the so-called "Contiguous Area" comprising 9 sixteenth blocks with a total area of just under 2000 km², cf. p. 3 of the Memorandum.

Effective from 1 January 2000, 25% of the Contiguous Area has been relinquished, cf. "Agreement of 17 July 2000 on Area Relinquishment and Field Delineation for the Contiguous Area, effective 1 January 2000" (part of appendix 4 to the Memorandum). However, according to article 6, clause 5, of the Agreement of 19 May 1981, "if an area that is to be relinquished on 1 January 2000 or 1 January 2005 cannot be determined without including an oil or gas field from which hydrocarbons are being produced or for which production plans are submitted to the Minister of

Energy, the area shall be reduced to the extent necessary." As a result hereof 16 % was relinquished on 1 January 2000. A further 25% of the Contiguous Area will be relinquished effective 1 January 2005. A map showing the present area covered by the Sole Concession is attached as appendix 1.

The Contiguous Area contains the majority of the producing fields on Danish territory. Not all of these fields have yet been delineated. But it is already now evident that in at least 7 out of the 9 sixteenth blocks in the Contiguous Area APM/DUC will after 1 January 2005 only retain fields that are already producing or for which production plans have been submitted. In one sixteenth block it is doubtful whether there will be retained a small area outside the fields after relinquishment of 50%. In the easternmost sixteenth block only part of the remaining 50% will be covered by a delineated field.

The total area retained by APM/DUC after 1 January 2005 outside of producing fields and fields to be developed shortly will only be about 100 km². The existing geometric division of the Danish territory is based on sixteenth blocks of about 220 km² each.

The 29 September Agreement and subsequent agreements only prolong the Sole Concession beyond 8 July 2012 with regard to areas retained by APM/DUC prior to that date according to the existing agreements; cf. clause 2 of the Addendum of the Sole Concession (included in appendix 1 to the Memorandum).

Thus the prolongation agreed only concerns areas in which production is actually taking place or where discoveries made will be developed shortly, only with the exception of areas amounting to a total of about 100 km². It follows from clause 2 of the 29 September Agreement (cf. also clause 3 of the Addendum to the Sole Concession) that when production from a field is abandoned, the relevant area shall be relinquished to the State.

Considerable investments have been made by APM/DUC in the fields and production facilities. The total investments made amount to DKK 83 billion (2003-prices). Evidently this amount is much larger than the book value which as per 31.12.2002 can be estimated to around DKK 15 billion. The estimated book value can not be divided according to the shares of the Concessionaires and their partners in the Sole Concession. Planned development of other discoveries made is estimated to around DKK 3.8 billion per year (2003-prices) on average for the next 3 years. Moreover considerable investments are expected in the years hereafter.

As some of the Danish fields are relatively small, all fields covered by the Sole Concession both inside and outside of the Contiguous Area are connected by pipelines to central processing facilities for oil and gas on the Gorm and Tyra fields respectively.

Thus, the prolongation of the Sole Concession concerns the continuation of one existing large oil and gas production operation. The production facilities are centralized and common for all the fields.

Already from the outset, it was foreseen that the Sole Concession might expire at a time when production under the concession was still being performed. This had several consequences.

First, the Sole Concession since the outset contains provisions on the possible taking-over of existing plants, cf. article 12, paragraphs 5 and 6 of Order No. 372 of 7 November 1962 (appendix 4 to the Memorandum). The State will not automatically take over such plants, but can choose to do so. In the event that the State chooses to exercise its right to take over existing plants, the price will have to be determined by agreement or, if no agreement can be reached, by arbitration. The Sole Concession does not contain any provisions, which specify how the price for the possible taking-over of existing plants is to be determined. Therefore, if after 8 July 2012 the activities were to be pursued by one or more new licensees, considerable difficulties in determining the price to be paid by the State, and ultimately by the new licensees, for the taking-over of existing production facilities were to be foreseen.

Second, in accordance with article III of the Protocol of 16 July 1962 (cf. appendix 4 to the Memorandum), the Danish Government is obliged to enter into negotiations with the licensees regarding the possible continuation of their activities in the areas, which should be relinquished on 8 July 2012. Such negotiations must be entered into "in ample time" before the expiry of the Sole Concession.

Although this provision does not grant the existing licensees an automatic right to obtain an extension of the Sole Concession, it obliges the Danish Government to conduct negotiations with the existing licensees regarding the possible continuation of their activities under the Sole Concession without any prior or simultaneous negotiations with other potential licensees.

In accordance with general principles of Danish contract law the negotiations must be conducted in good faith with a view to entering into an agreement on the continuation of the activities. Therefore, it would constitute a breach of contract for the Government not to agree upon a continuation of the activities of the existing licensees after 8 July 2012 unless the result of the negotiations with the existing licensees was such that the Government could reasonably claim that better terms - from the Government's point of view - were likely to be obtained by entering into negotiations with other potential licensees.

It follows that as regards the granting of one or more concessions covering the areas, which were to be relinquished in 2012, Denmark

could not follow the procedure laid down in article 3 of Directive 94/22 - or indeed any other procedure involving other potential licensees - before negotiations with the existing licensees had proved unsuccessful.

During the preparation of Directive 94/22 it was taken into consideration that the exceptions from normal procedures in Article 3, paragraph 5 (c), and Article 4, (b) would probably allow the Danish Government to fulfil its obligations under the Sole Concession.

However, in order to avoid any doubt in this connection the special derogation in Article 13 was included in the directive.

The special contractual obligations of the Danish Government are explicitly recognised in the last indent of the Preamble to Directive 94/22 in which it is stated that

"..... Denmark is in a special situation due to the fact that it is obliged to enter into negotiations on a possible continuation of the activities after the expiry of the concession, issued on 8 July 1962, concerning the areas, which are relinquished on 8 July 2012 and that Denmark will thus be accorded a derogation concerning these areas."

The derogation accorded to Denmark (article 13 of Directive 94/22) has the following wording:

"The provisions of Articles 3 and 5 shall not apply to new authorizations granted by Denmark before 31 December 2012, in respect of the areas which are relinquished on 8 July 2012 upon expiry of the authorization issued on 8 July 1962. The new authorizations shall be granted on the basis of objective and non-discriminatory principles. Consequently, this Article shall not create any precedent for Member States."

As the derogation has been accorded with the explicit aim of enabling Denmark to fulfil its contractual obligations, article 13 must be interpreted in such a way that Denmark is in fact able to do that.

Therefore, when it is stated in article 13 of the Directive that the authorizations shall be granted "on the basis of objective and non-discriminatory principles" this cannot mean that the Danish Government was obliged to conduct negotiations with other potential licensees unless it were to be concluded on the basis of the negotiations with the existing licensees that they were not willing to accept competitive terms for the continuation of their activities after 8 July 2012.

The condition in Article 13 according to which the terms must be "objective and non-discriminatory" means that the terms must be

comparable to those which would have been offered to other potential licensees and involving no preferential treatment of the existing licensees other than the rights of negotiation and first refusal provided for by the Sole Concession.

2. The procedural rules of Directive 94/22

As article 13 of Directive 94/22 was inserted in the directive with the specific aim of enabling the Danish Government to fulfil its contractual obligation vis-à-vis the existing licensees, the fact that negotiations were conducted exclusively with the existing licensees must necessarily be considered as being in accordance with the directive.

Therefore, the relevant question is rather whether the result of the negotiations with the existing licensees was such that (1) it was in accordance with the obligation to negotiate in good faith with a view to entering into an agreement to accept the result obtained and (2) it fulfils the condition set up in article 13 of Directive 94/22 according to which the agreements must be based on "objective and non-discriminatory principles".

In the opinion of the Danish Government, there can be no doubt that the resulting agreements are so beneficial from the point of view of the Danish State that it could not be reasonably claimed that better terms were likely to be obtained by entering into negotiations with other potential licensees.

Therefore the agreements have been made in accordance with the terms of the Sole Concession, and they involve no preferential treatment of APM/DUC. Thus, the condition laid down in article 13 of Directive 94/22 is fully respected.

With regard to the benefits obtained reference is made to the detailed account of the agreements contained in section 4 of the Memorandum. The Government would, however, like to draw special attention to the following points.

First, in all essential respects (e.g. state participation and the obligations of the licensees regarding work programmes etc.) the terms of the concession applicable as from 9 July 2012 are practically identical to all other concessions, which have been granted in accordance with the procedure laid down in article 3 of Directive 94/22.

There is, however, one very important difference. In all other Danish concessions, the State has to pay its part of the costs involved in establishing the production facilities. The state participation of 20% in the Sole Concession includes the transfer of 20% of all the existing facilities with a present book value as mentioned on page 3 free of charge.

For that reason alone, it must be concluded that the terms are in accordance with article 13 of the directive, i.e. that they are "objective and non-discriminatory".

However, it is not only the terms of the concession applicable as from 9 July 2012, which reveal that article 13 of the directive has been complied with.

As is explained in detail in section 4 of the Memorandum, the changes to the financial terms of the Sole Concession, which apply already from 1 January 2004, considerably augment the State's share of the total return on the activities in the Danish part of the North Sea.

It is obvious that other potential licensees would not have been able to, or willing to, offer financial terms involving similar benefits for the Danish State.

Apart from the direct financial consequences of the 29 September Agreement and subsequent agreements it should also be mentioned that the agreements lead to long-term and stable conditions for the continued activities in the Danish part of the North Sea. In itself, this must be expected to lead to further benefits for the Danish State in the form of increased production and, consequently, a higher State revenue, cf. pp. 12-13 of the Memorandum.

For the foregoing reasons, the 29 September Agreement and subsequent agreements have been concluded in strict conformity with article 13 of Directive 94/22, including the condition according to which the agreements must be based on objective and non-discriminatory principles.

Due to the fact that article 13 of Directive 94/22 was inserted in the directive with the specific aim of avoiding any doubt, that Denmark would be able to fulfil its contractual obligations vis-à-vis the existing licensees, the Danish Government is of the opinion that this provision should be in focus when examining whether the directive has been complied with. However, it should be added that there are other provisions in the directive, which are likely to lead to the same result.

First, article 3, paragraph 5, lists certain forms of conduct, which cannot be considered as the grant of an authorization within the meaning of paragraph 1 of that same article. Article 3, paragraph 5 (c) concerns:

"The decision of the competent authorities taken within the framework of an authorization (whether or not such authorization was granted before the date fixed in Article 14) and relating to the commencement, interruption, prolongation or cessation of the activities or to the prolongation of the authorization itself."

In the present case, as has already been explained, the agreement regarding the continuation of the activities in the relevant areas has been concluded in accordance with the pre-existing authorization itself.

Second, it follows from article 4 (b) that the competent authorities "may prolong the authorization where the stipulated duration is insufficient to complete the activity in question and where the activity has been performed in accordance with the authorization". Thus, the prolongation of an authorization to the extent necessary to complete production, which has already been initiated in accordance with the authorization, clearly falls outside the scope of the procedural rules set up in article 3 of Directive 94/22.

As explained in section 1 above, the 29 September Agreement and subsequent agreements only prolong the concession as regards producing fields, and when production from a field is abandoned, the relevant area shall be relinquished to the State. The insignificant further area of about 100 km² follows from the existing geometric division of the territory into sixteenth blocks. Therefore, the concession has only been prolonged to the extent, which is necessary for the licensees to complete their activities in the relevant areas held under the already existing concession.

3. The areas covered and the duration of the concession.

As regards those areas, which are covered by the 29 September Agreement, it follows from what has already been stated that the Danish Government did not have any possibility of "splitting-up" the areas, which were to be relinquished on 8 July 2012. On the contrary, in order for the Danish Government to fulfil its contractual obligations, the 29 September Agreement had to cover all those areas, which were to be relinquished on 8 July 2012.

It should be added that the fact that the 29 September Agreement covers a considerable area under the same conditions allows the licensees to perform their activities in the way which is the best possible from technical and economic points of view, cf. article 4, (a) of Directive 94/22. In fact, as explained in section 1, APM/DUC have set up the production facilities in the area as one physically connected unity precisely in order to perform their activities in the best possible way from the technical as well as the economic points of view.

As regards the Commission's request for detailed explanations as to the consequences of specific areas not being exploited, it has already been mentioned in section 1 that the licensees will have to relinquish such areas to the State in which production is abandoned. The detailed rules concerning such relinquishments are contained in clause 3 of the Addendum to the Sole Concession.

Finally, as regards the duration of the concession, it has been extended until 8 July 2042 in order to allow the licensees to complete their production activities in accordance with the concession. The stipulated duration of the concession has been considered necessary in order for the activities to be performed in the most efficient manner from a technical and economical point of view.

However, areas covered by the concession will have to be gradually relinquished in so far as production is abandoned, and it is explicitly stated in clause 3, subsection (11) of the Addendum to the Sole Concession that the concession shall be terminated in its entirety if all production ceases.

The 29 September Agreement and subsequent agreements have therefore been concluded in accordance with article 4 of Directive 94/22, which states that the duration of an authorization must not exceed the period necessary to carry out the activities for which the authorization is granted.

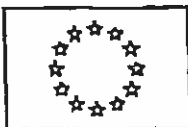
Yours faithfully



Peter Helmer Steen

AFTER 1/1/2004	DUC	New licensees starting after 1/1/2004	Other existing hydrocarbon producers	Other companies
Corporate tax	30%	30%	30%	30%
Hydrocarbon tax	52% Allowance of 5% of the investment made by the company. Granted over 6 years i.e. a total of 30%. As regards investments already made before 1/01/04, allowance is reduced to 10% (previously was 25%). Will cease when investment is 10 years old.	52% Allowance of 5% of the investment made by the company. Granted over 6 years i.e. a total of 30%.	70% Allowance of 25% of the investment made by the company. Granted over 10 years i.e. a total of 250%. NBI Can opt to be taxed as DUC and the new licensees, but will become automatically equally taxable after the expiry of current licence.	N/A
Field delineation	Abolished	N/A	7	N/A
Pipeline tax / Compensation fee	5% until 9/07/2012 Provided in the agreement between DUC and Danish Government Tax base is the production value of the oil after the deduction of transport costs. Set off against the hydrocarbon tax.	5% until 9/07/2012 Provided in the Oil Pipeline Act Tax base is the production value of the oil after the deduction of transport costs. Set off against the hydrocarbon tax.	5% until 9/07/2012 Provided in the Oil Pipeline Act Tax base is the production value of the oil after the deduction of transport costs. Set off against the hydrocarbon tax.	N/A
20% share of the capital	Until 8/07/2012 - 20% of profit before tax After 9/07/12 - state participation of 20%. NBI State will not pay for the take-over.	YES	YES	N/A

UNTIL 30/12/2003	DUC	Other existing hydrocarbon producers	Other companies
Corporate tax	30%	30%	30%
Hydrocarbon tax	70% Allowance of 25% of the investment made by the company. Granted over 10 years i.e. a total of 250%.	70% Allowance of 25% of the investment made by the company. Granted over 10 years i.e. a total of 250%.	N/A
Royalties	8.5% (Deductible in corporate and hydrocarbon tax base)	N/A	N/A
Pipeline tax / Compensation fee	5% Provided in the agreement between DUC and Danish Government Tax base is the production value of the oil after the deduction of transport costs. Deductible in corporate and in hydrocarbon tax base.	5% Provided in the Oil Pipeline Act Tax base is the production value of the oil after the deduction of transport costs. Deductible in corporate and in hydrocarbon tax base.	N/A
20% share of the capital	NO	YES	N/A



EUROPEAN COMMISSION
Competition DG

State aid I: aid Schemes and Fiscal issues
The Head of Unit

FÆLLESREPRÆSENTATIONEN BRYSSEL	
I BLAG	
20 APR. 2004	
40	KY-1-3

Hjælpes (vugt)

- EVU

- OEM: *Lars Nielsen*

- ENS: *Peter H. Steen*

next close, 7 apr.

Brussels, 16.04.2004 *D / 52702 *sub P.*
COMP/G3/EU-hb/ D (2004) - 0186

Permanent Representation of
Denmark to the European Union
Rue d'Arlon, 73
1040 - BRUXELLES

Subject: North Sea Oil Tax Regime CP 17/04 - Denmark

Dear Sir,

We would like to thank you for your reply of 1 April 2004 to our letter from 10 March 2004. In addition to the previous questions, the Commission would appreciate to obtain a written clarification in the following further issues stated below.

As agreed earlier in our meeting on 4 March 2004, the letter is addressed to your authorities in English only. Should you need a copy in Danish, please let us know.

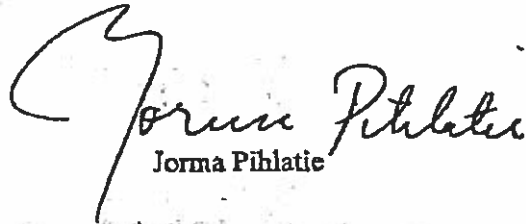
1. The Commission would like to know how the conditions for granting the hydrocarbon exploration licences are established in Denmark, what the conditions introduced in 1980s were and why they were different from the conditions provided earlier to DUC/APM (i.e. new licensees had a state participation of 20% while there was no state participation in DUC/APM). What is the legal basis for establishing the conditions?
2. The Commission would like to know what the relation between the Sole Concession and the tax regime is. Since we distinguish between these two issues – concluding a concession agreement (which is a private law issue) and introducing the tax regime (a public law issue) – we would like to know why the new hydrocarbon tax regime of 1/01/2004 was not made equally compulsory for DUC/APM and any other licensees.
3. The Commission understands that the taxation is at the sole competence of the Danish State and the hydrocarbon tax regime in Denmark has been stipulated by the Hydrocarbon Tax Act. Do the Sole Concession agreement and other licences granted provide a restriction for Denmark to change the tax rules? Is Denmark always obliged to have an agreement with licensees before changing the tax system applicable to them?

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: J79 5/208. Telephone: direct line (32-2) 2962421. Fax: (32-2) 2961242.

4. What are the reasons why the new licensees, starting after 1/01/2004, are granted less favourable conditions than the existing licensees (except DUC/APM) which started their activities from 1986 until 2003?
5. Appendix I to the Report to the Danish Parliament, page 16, indicates that the oil pipeline tariff for DUC/APM is provided in the contract between APM and Danish Minister of Energy while for the other licensees in the Oil Pipeline Act. Why is there such a distinction and have the conditions and rates always been the same?
6. Is field delineation part of the previous tax system and is it abolished from 1/01/2004 only for DUC/APM, but not for the other existing licensees?
7. We have attached a set of tables comparing the different types of licensees before 1/01/2004 and after. We would appreciate if you could confirm whether the information included in the tables is correct.

Without this information, the Commission is unable to define its position on the measure under question. This information should reach the Commission within 20 working days of the date of receipt of this letter.

Yours faithfully,



Jorma Pihlatie

Contact person: Erki Uustalu, Tel. (32-2)2962421



COMMISSION EUROPÉENNE
DIRECTION GÉNÉRALE DE L'ÉNERGIE ET DES TRANSPORTS

Le Directeur général

TIL Energistyrelsen og ØEM, dejn.
FRA: EU-REPR./ Pero F. Jensen
UDEN SKRIVELSE, J.NR. _____
DEN 8/4-04

Bruxelles, le 01 AVR. 2004
TREN/C3/PB/bg D(2004) 1549

FÆLLESREPRÆSENTATIONEN BRYSSEL		
1 BILAG		
05 APR. 2004		
400.	K.4-1-5.	

Monsieur l'Ambassadeur,

Me référant à notre entretien du 15 janvier 2004 et en particulier à l'accord conclu le 29 septembre 2003 sur l'extraction de pétrole en Mer du Nord, mes services ont procédé à un examen préliminaire de certains des documents que vous m'avez remis en cette occasion.

Entre-temps, j'ai également fait parvenir copie de vos documents à la Direction générale Concurrence, responsable pour le volet aides d'Etat.

Dans ce contexte, je vous remercie de bien vouloir me fournir les précisions relatives aux questions reprises en annexe pour permettre à mes services de compléter leur analyse.

Veuillez croire, Monsieur l'Ambassadeur, à l'assurance de ma haute considération.


François Lamoureux

H.E. ambassadør Claus GRUBE
Danmarks Faste Repræsentant ved Den Europæiske Union
Rue d'Arlon 73
B-1040 Bruxelles

1. Tildeling af tilladelsen ud fra objektive og ikke-diskriminerende kriterier

Blandt betragtningerne i Europa-Parlamentets og Rådets direktiv 94/22/EF af 30. maj 1994 om betingelser for tildeling og udnyttelse af tilladelser til prospektering, efterforskning og produktion af kulbrinter (EFT L 164 af 30.6.1994, s. 3) bemærkes følgende (uddrag):

"der bør uden forskelsbehandling sikres adgang til og mulighed for at udøve virksomhed i forbindelse med prospektering, efterforskning og produktion af kulbrinter på betingelser, som fremmer konkurrencen i denne sektor [...]".

I henhold til artikel 2, stk. 2, sikrer medlemsstaterne, når et område gøres tilgængeligt for udøvelse af virksomhed, at der ikke finder forskelsbehandling sted mellem enhederne med hensyn til adgang til og udøvelse af disse former for virksomhed.

I den foreliggende sag vil spørgsmålet om, hvorvidt direktivets artikel 13 kan gøres gældende, ikke ændre det faktum, at nye tilladelser skal udstedes på grundlag af objektive og ikke-diskriminerende principper, som det udtrykkeligt er anført i den pågældende artikel.

Det for Kommissionen udarbejdede dokument med titlen "Memorandum on the agreements concerning the future regime for oil and gas activities carried out by Danish Underground Consortium in the Danish part of the North Sea" indeholder et vist belæg for at kunne konkludere, at der ikke er offentliggjort en udbudsrunde.

For så vidt angår de kriterier og overvejelser, der synes at danne grundlaget for afgørelsen om at tildele den pågældende tilladelse, forekommer de i dokumentet anførte grunde ved første øjekast hovedsagelig at være koncentreret om overvejelser angående nationale økonomiske interesser. I ovennævnte memorandum kan læses følgende bemærkninger: (uddrag) som bør fremhæves: "*without the agreement, it would have to be expected that investments in exploration would cease shortly as DUC would not have enough time to exploit new fields.*"; "*even if the terms for the period after 2012 are considered separately they are fully within the likely outcome of a public tender taking into account the outcome of former Danish bidding rounds and the terms applied in UK, NL, and Norway for comparable areas.*"; "*Different production scenarios, with and without an agreement, have been evaluated. [...] Thus, the benefit of the agreement for the Danish State – expressed in extra production – amounts to 54 million cubic metres of oil.*"

Følgelig bør følgende punkter dokumenteres yderligere:

- Kan det bekræftes, at der ikke fandt noget offentligt udbud sted, herunder som det i direktivets artikel 3 beskrevne?
- Hvis Danmark fulgte en begrænset procedure, skal det præciseres, hvilke kriterier der blev lagt til grund for udvælgelsen af de kandidater, der blev opfordret til at indgive en ansøgning, og derefter for at føre forhandlinger med kun én af disse kandidater.
- Hvis der derimod blev iværksat en eller flere aftalte procedurer lige fra starten, hvilke virksomheder – hvis der altså var flere – blev så i givet fald konsulteret, på grundlag af hvilke kriterier blev disse virksomheder udvalgt, og hvorfor

beslattede Danmark (senere) at forhandle betingelserne for en tilladelse med kun en af disse virksomheder?

2. Fastlæggelse af de pågældende områders udstrækning og tilladelsens varighed

Et andet spørgsmål vedrører den pågældende tilladelses geografiske udstrækning og varighed, der skulle udløbe i 2042.

Ifølge en af direktivets betragtninger "bør der ske en begrænsning af de områder, som en tilladelse dækker, og af tilladelsernes varighed, så det undgås, at en enkelt enhed får eneret til områder, hvor det vil være mere effektivt at lade flere enheder gennemføre prospektering, efterforskning og produktion."

I samme tankegang udstikkes der i direktivets artikel 4 følgende: (uddrag) *Medlemsstaterne træffer de nødvendige foranstaltninger med henblik på følgende [...] når opdelingen af de geografiske områder ikke er resultatet af en forudgående geometrisk opdeling af territoriet, fastlægges de forskellige områders areal på en sådan måde, at det ikke overstiger den størrelse, der er berettiget, for at virksomheden kan udøves på den bedst mulige måde set ud fra et teknisk og økonomisk synspunkt."*

Følgelig bør det præciseres, hvordan koncessionens arealdækning blev fastlagt i den pågældende tilladelse. Der skal navnlig gives oplysninger om den pågældende tilladelses geografiske udstrækning (bl.a. arealstørrelse), om grundene til at der ikke blev foretaget en opdeling af det pågældende område med henblik på tildeling af tilladelser til flere virksomheder, såvel som en indgående forklaring af de nærmere regler for, hvad der kan eller skal ske, hvis dele af det af tilladelsen berørte område eventuelt ikke udnyttes.

Ifølge direktivets artikel 4 skal medlemsstaterne i øvrigt træffe de nødvendige foranstaltninger med henblik på følgende: (uddrag) *«tilladelsens varighed må ikke overstige det tidsrum, der er nødvendigt for at afslutte den virksomhed, tilladelsen vedrører. [...] »; «enheder har kun enerettigheder i det geografiske område, som tilladelsen omfatter, i det tidsrum, der er nødvendigt for at afslutte den virksomhed, tilladelsen vedrører. »*

Det vil på denne baggrund være hensigtsmæssigt at informere Kommissionen om, hvilke grunde der berettigede den pågældende tilladelses varighed, og hvorfor der hele tiden åbenbart kun er én indehaver af rettighederne.


DANISH ENERGY AUTHORITY

European Commission
Competition DG
Brussels

Att.: Jorma Pihlatie

30 March 2004
File no.: 010104/10004-
0002
Ref.:

Subject: North Sea Oil Tax Regime CP 17/04 - Denmark

Dear Sir,

By letter of 10 March 2004 the Commission asked to be provided with written clarification on a number of issues. Please find below the answers to the Commission's questions.

1. **According to the Commission's understanding, the changes to hydrocarbon taxation were introduced by the separate hydrocarbon tax law, which became effective as of 1 January 2004. Is it correct that the agreement of 29 September 2003 "forces" APM/DUC to apply the new tax rules, while the other licensees are allowed to continue under the old tax regime?**

Yes.

By the 29 September-agreement APM/DUC accepted that the planned changes to the hydrocarbon tax act should be applicable to them with effect from 1 January 2004. However, this only applies to their activities under the Sole Concession. To the extent that they have other licences, they are treated as "other existing licensees".

Other existing licensees can opt to apply the new tax regime, but can otherwise continue to stay under the old tax regime for the duration of the existing licences, cf. the answer to question 3 below.

It should be noted that existing licensees that obtain new licenses after 1 January 2004 will be taxed according to the new tax regime as regards their activities under the new licences.

It may be added that the new rules are drafted in such a way that they will automatically apply to APM/DUC. However, the act - which aimed at raising the total government take on the Sole Concession held by APM/DUC, cf. the answer to question 2 below - was passed by the Danish Parliament on the basis that this had been accepted by APM/DUC in the 29 September-agreement.

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**MINISTRY OF ECONOMIC
AND BUSINESS AFFAIRS**



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2. **The Commission would like to know the main reasons why the agreement was concluded only with APM/DUC, while the remaining licensees were allowed to continue under the old rules.**

The new tax regime leads to a higher level of taxation reflecting the explicitly stated intention of the Danish Parliament to raise the total government take on the Sole Concession held by APM/DUC.

There is no doubt that APM/DUC only accepted the application of the new tax regime to the activities under the Sole Concession because this was part of a general agreement, which also contains benefits for APM/DUC, in particular as regards the time extension of the Sole Concession. For other existing licensees a mandatory application of the new tax regime would most likely have only detrimental effects.

It should be added that as APM/DUC accepted the application of the new tax regime by agreement, APM/DUC must have considered that the pros of the agreement outweighed (at least) the cons. Even if other licensees might wish to obtain an extension of their licences it would not be possible to enter into a similar agreement with them as the directive only exempts prolongation of the Sole Concession from the bidding procedures.

The possibility for the other existing licensees to stay under the old tax regime clearly cannot be construed as a State aid to those other existing licensees as they are not in a situation comparable to APM/DUC. APM/DUC has accepted the stricter taxation rules in connection with the advantages obtained under the 29 September-agreement.

3. **The Commission's understanding is that the other licensees can opt to switch to the new tax rules or to continue application of the [old] rules. Until which time the old licensees can continue applying the previous hydrocarbon tax rules? When it is expected that all the licensees will have switched to the new rules?**

Existing licensees can continue applying the previous hydrocarbon tax rules with regard to their activities under existing licences for the duration of those licences, provided that the present legislation is not changed by the Danish Parliament. Certain existing licences are still in the exploration phase. They may be extended by 30-year production licences if discoveries are made. Such production



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licences will be considered as existing licences as the extension is in accordance with the terms of the licences.

There exist the following licences granted with effect from before 1 January 2004:

<u>Licence</u>	<u>Field</u>	<u>Expiry</u>
<i>Licences with production:</i>		
7/89	Syd Arne	17 th of February 2027
1/90 + 7/86	Lulita	8 th of March 2026
6/95	Siri	18 th of July 2027
4/95	Nini	18 th of June 2032
16/98	Cecilie	18 th of Juni 2032 ¹

<i>Licenses with production approved</i>		
7/86	Amalie	14 th of August 2026

As of March 2004 a total of 16 licenses are in the exploration phase. Seven of these licenses are expected to be relinquished during 2004. Most of the 16 licenses are from the fifth license round and issued in 1998. These licenses can only in exceptional cases be extended beyond 10 years, i.e. beyond 2008. If discoveries are made, and production initiated, they can be extended by 30 years, i.e. to expiry in 2038. If production ceases from such a fifth round license, the license has to be relinquished at that time.

Thus, the new tax regime will apply to all hydrocarbon activities in the Danish part of The North Sea at the latest by 2038.

4. **The Commission understands that hydrocarbon producers are subject to an ordinary corporate tax alike any other companies in Denmark. However, hydrocarbon producers are subject to an additional layer of tax - a hydrocarbon tax. Is there a possibility that the allowances or any other incentives related to the hydrocarbon tax affect negatively also the corporate tax (e.g. due to the extensive hydrocarbon tax allowances, the hydrocarbon producers would pay less corporate tax than they would pay in case they would not be entitled to hydrocarbon tax allowances).**

No. Hydrocarbon producers are in some respects under stricter rules with regard also to the ordinary company tax than others (cf. the answer to question 5 below), but they are in no respect treated more

¹ If production ceases earlier, the license has to be relinquished at that time



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favorably due to the fact that they are subjected to the hydrocarbon tax.

5. In page 16 of the Report to the Danish Parliament it has been mentioned that *"the corporate tax is stated separately for the hydrocarbon activities in Denmark. This means that any deficits from other activities cannot be deducted before payment of corporate tax on hydrocarbon activities"*. The Commission would like to know whether this restriction also applies in an opposite situation i.e. whether the deficits from hydrocarbon activities can be deductible from profits of other activities.

No.

If the separate statement of corporate tax for the hydrocarbon activities shows a deficit this can be deducted in the base for corporate tax on other activities. Consequently, the separate statement of corporate tax for hydrocarbon activities mainly serves to ensure that corporate tax is levied on income from hydrocarbon activities even if the taxable entity has deficits from other activities.

6. In page 17 of the Report to the Danish Parliament it has been mentioned that basically, the base for hydrocarbon tax is the same as that of the corporate tax. One of the exceptions is that the corporate tax can be deducted for hydrocarbon tax purposes. The Commission would like to know whether the corporate tax is deducted from the hydrocarbon tax base or it is credited against the hydrocarbon tax payable.

The corporate tax on hydrocarbon activities is deducted from the hydrocarbon tax base.

7. The Memorandum on the agreements concerning the future regime for oil and gas activities, page 15, 6th paragraph refers that *"the other licensees will be offered a compensation agreement on similar terms"*. The Commission would like to know in which form the compensation agreement is guaranteed to the other licensees. Is it provided by the law that they are entitled to the agreement on the similar terms or merely by reflection of a political will (parliamentary promise)? If it is merely a parliamentary promise, on which legal basis the licensees can enforce parliament to fulfil the promise?

The conditions of other licences are different from the conditions of the Sole Concession before the 29 September-agreement. Most



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significantly they all from the outset provide State participation of (at least) 20%. There are also differences among the other licenses.

As a fundamental element of the compensation agreement is the maximization to the net advantages agreed in connection with the compensation agreement, it is not possible to grant other licensees exactly the same compensation agreement as APM/DUC. The wording must be adjusted to the specific licence.

This is why the promise to other licensees had to be stated in general terms and could not be included in the text of the Act.

However, during the parliamentary debates on the changes to the hydrocarbon tax regime it was publicly stated in the Danish Parliament that other licensees who opt to apply the new tax regime to existing licences will be offered a compensation agreement on similar terms as those offered to APM/DUC.

The general principles of such compensation agreements were also stated, in particular that compensation to other existing licensees should be paid under the same conditions as agreed with APM/DUC, and that the compensation should be maximized in accordance with paragraph 4 of the compensation agreement with APM/DUC. But it would also be reasonable to maximize compensation to other licensees to the advantage, which they voluntarily give the State by opting to be taxed in accordance with the new tax regime.

Therefore, a double maximum will be inserted; one which is calculated in the same way as the maximum in the compensation agreement with APM/DUC, the other calculated on the basis of the additional tax revenue, which existing licensees will accord to the State by opting for taxation under the new tax regime.

Other existing licensees will have to declare whether they opt for the application of the new tax regime before handing in their tax statements for the income year 2004.

As it has been publicly stated in the Danish Parliament that they will be offered a compensation agreement in accordance with the principles mentioned above if they choose to be taxed under the new tax regime, it follows from general principles of Danish law that the licensees will in no event be bound to follow the new tax rules if they should not be offered an acceptable compensation agreement.

According to the assessment of the legal advisers of the Danish Government existing licensees that opt to be taxed under the new tax regime will also be able to enforce the promise in the Danish



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courts based on general principles of legitimate expectations and principles regarding promises in contract law.

There are no restrictions in Danish law with regard to initiating court procedures against the Danish State, and a case may be directed against the minister in charge on behalf of the Danish State.

Yours faithfully,

Peter Helmer Steen



EUROPEAN COMMISSION
Competition DG

State aid | aid schemes and Fiscal Issues
The Head of Unit

FÆLLESREPRÆSENTATIONEN BRYSSEL		
BILAG		
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Brussels, 10.03.2004*0 / 51760
COMP/G3/EU-cd/D (2004) - 0122

Permanent Representation of
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→ Urgent (fax)
- EUU
- OEM: Lars Nielsen
- ENS: Peter Helms
- kop: Gunder, PSP, Rasmus
P. P.

Subject: North Sea Oil Tax Regime CP 17/04 - Denmark

Dear Sir,

Following the meeting of 4 March 2004 regarding the Danish North Sea Oil Tax Regime, the Commission would like to be provided with written clarification in the following issues expressed below.

As agreed in the meeting, this letter is addressed to your authorities in English only.

1. According to the Commission's understanding, the changes to hydrocarbon taxation were introduced by the separate hydrocarbon tax law, which became effective as of 1 January 2004. Is it correct that the agreement of 29 September 2003 "forces" APM/DUC to apply the new tax rules, while the other licensees are allowed to continue under the old tax regime?
2. The Commission would like to know the main reasons why the agreement was concluded only with ARM/DUC, while the remaining licensees were allowed to continue under the old rules.
3. The Commission's understanding is that the other licensees can opt to switch to the new tax rules or to continue application of the new rules. Until which time the old licensees can continue applying the previous hydrocarbon tax rules? When it is expected that all the licensees will have switched to the new rules?
4. The Commission understands that hydrocarbon producers are subject to an ordinary corporate tax alike any other companies in Denmark. However, hydrocarbon producers are subject to an additional layer of tax - a hydrocarbon tax. Is there a possibility that the allowances or any other incentives related to the hydrocarbon tax affect negatively also the corporate tax (e.g. due to the extensive hydrocarbon tax allowances, the hydrocarbon producers would pay less corporate tax than they would pay in case they would not be entitled to hydrocarbon tax allowances).

5. In page 16 of the Report to the Danish Parliament it has been mentioned that "*the corporate tax is stated separately for the hydrocarbon activities in Denmark. This means that any deficits from other activities cannot be deducted before payment of corporate tax on hydrocarbon activities*". The Commission would like to know whether this restriction also applies in an opposite situation i.e. whether the deficits from hydrocarbon activities can be deductible from profits of other activities.
6. In page 17 of the Report to the Danish Parliament it has been mentioned that basically, the base for hydrocarbon tax is the same as that of the corporate tax. One of the exceptions is that the corporate tax can be deducted for hydrocarbon tax purposes. The Commission would like to know whether the corporate tax is deducted from the hydrocarbon tax base or it is credited against the hydrocarbon tax payable.
7. The Memorandum on the agreements concerning the future regime for oil and gas activities, page 15, 6th paragraph refers that "*the other licensees will be offered a compensation agreement on similar terms*". The Commission would like to know in which form the compensation agreement is guaranteed to the other licensees. Is it provided by the law that they are entitled to the agreement on the similar terms or merely by reflection of a political will (parliamentary promise)? If it is merely a parliamentary promise, on which legal basis the licensees can enforce parliament to fulfil the promise?

Without this information, the Commission is unable to define its position on the measure under question. This information should reach the Commission within 20 working days of the date of receipt of this letter.

Yours faithfully,



Jorma Pihlatie

Contact person: Erki Uustalu, Tel. (32-2)2962421

