

Guide to Danish Tax Law Research

1. Introduction

This guide summarizes the sources of Danish tax law, where to find them and where to find Danish tax literature. Unfortunately, most of the relevant laws and literature are in Danish.

An all-round introduction to the Danish Tax system is found at the homepage of the Danish Tax Authorities:

<http://www.toldskat.dk/basic.php?source=/international/english.cnt>.

In this respect, we also recommend the Deloitte homepage:

<http://www.deloitte.com/dtt/article/0,2297,sid%253D11414%2526cid%253D15956,00.html>

A specialized introduction to several aspects in the Danish tax system can be found in *Juhani Kesti (ed.): European Tax Handbook, 2003, IBFD Publications*, and the national reports in the Cahiers de Droit Fiscal International.

All Danish laws are found at www.retsinfo.dk. The database is however difficult to use. Recent legislation (app. from 5 years to date) can be found at the parliament homepage:

www.folketinget.dk, under the section *documents*.

2. Constitutional and European Law

The Danish Constitution (Grundloven) provides the general legal authority to levy taxes, cf. sec. 43. At the same time it is stated, that taxes cannot be levied without proper legal authority in the form of a statute. See e.g.:

- *Henrik Zahle (ed.)*: Danmarks Riges Grundlov, 2000, Jurist- og Økonomforbundets Forlag
- *Jacob Graff Nielsen*: Legalitetskravet ved beskatning – De forfatnings- og forvaltningsmæssige rammer, 2003, Forlaget Thomson.

Taxes are levied on two levels: The state level and the communal level.

As a member of the European Union, Danish tax laws are under European influence in a number of ways. Thus VAT is harmonized by several directives, of which the 6th. is the most important.

Other important directives are:

1. Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation,
2. Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States,
3. Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States
4. Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments
5. Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States

The European Court of Justice (ECJ) is competent to interpret the directives.

National tax sovereignty must be exercised in respect of the basic freedoms and other fundamental principles in the EC treaty. Thus, Danish tax law is increasingly affected by the ECJ case law.

The following literature can be recommended:

- *Peter Wattel & Ben Terra*: European Tax Law, Kluwer, 2002.
- *Servaas van Thiel*: EU case law on income tax, IBFD Publications, 2001.
- *Servaas van Thiel*: Free movement of Persons and Income Tax Law: the European Court in search of principles, IBFD Publications, 2002.
- *Søren Næsborg Jensen*: EU-selskabsskatteret, Jurist- og Økonomforbundets Forlag, 1997.
- *Otmar Thömmes*: EC Corporate Tax Law, 1991.
- *Niels Winther-Sørensen* in Skatteretten 3, Thomson, 2000.

3. Laws and Regulations

Denmark has a multitude of tax laws. Below the most relevant laws will be mentioned.

For some of these tax laws there is an article-by-article commentary book written by private authors being either practitioners or scholars. Only some of these books are valuable for tax research purposes, due to the fact that they are often not sufficiently in-depth. Other literature satisfying the in-depth demand may in some cases be found.

3.1. State Tax Act (in Danish: Statsskatteloven)

The most essential Tax act in Danish tax law is the State Tax Act, from 1903. Herein the fundamental principles of the income tax system are found. Sec. 4 of the State Tax Act provide the general notion of income in Danish tax law. Sec. 5 of the State tax Act imply, that increase and decreases in the value of assets are tax-free. At the same time capital gains from the disposal hereof are tax-free. Sec. 6 of the State Tax Act provide the general statutory authority the deduct costs in the taxable income.

All mentioned principles have undergone changes since the introduction. Thus specific provisions expanding/narrowing the notion of income are found, specific provisions expanding/narrowing the deductible costs. In addition several separate acts regarding the taxation of capital gains have made the principle in Sec. 5 of the State Tax Act the practical exception.

See e.g.:

- *Kjeld Hemmingsen*: Driftsomkostninger i teori og praksis, Magnus Informatik A/S, 2003.

3.2. Corporation Tax Act (in Danish: Selskabsskatteloven)

The corporation tax act provides a systematic framework regarding resident and non-resident companies and includes the Danish rules regarding Thin Capitalization (§ 11), Corporate Tax Rate (§ 17), Group Consolidation (§31) and CFC-legislation (§ 32).

An entity is tax resident in Denmark, if the entity is registered in Denmark or if its central management and control is located in Denmark. Resident companies in Denmark are taxable on their worldwide income. Income and capital gains are pooled and taxed at the same corporate tax rate (2004: 30%).

See e.g.:

- *Jakob Bundgaard*: Koncernretlige neutralitetsstudier, GadJura, 1999.
- *Jakob Bundgaard*: Tynd kapitalisering – en skatteretlig fremstilling. Forlaget Thomson GadJura, 2002.
- *Jakob Bundgaard, Jens Wittendorff*: Armslængdeprincippet & Transfer Pricing
- *Jan Pedersen*: Transfer Pricing – I international skatteretlig belysning, DJØF's Forlag, 1998.
- *Jens Olav Engholm*: Selskabsskatteloven med kommentarer, GadJura, 1997.
- *Erik Werlauff*: Selskabsskatteretten 2003/2004, Forlaget Thomson GadJura, 2002.
- *Niels Winther-Sørensen*: Beskatning af international erhvervsindkomst – Indkomstopgørelsen for et fast driftssted, Forlaget Thomson GadJura, 2000.

3.3. Foundation Tax Act (in Danish: Fondsbeskatningsloven)

As a main rule, the Foundation Tax Act is build up the same way as the Corporation Tax Act.

A foundation is tax resident in Denmark, if the foundation is registered in Denmark or if its central management and control is located in Denmark. Resident foundations in Denmark are taxable on their worldwide income. Income and capital gains are pooled and taxed at the same corporate tax rate (2004: 30%).

See e.g.:

- *Lennart Lynge Andersen*: Fonde og Foreninger I og II, 4. udg. GadJura, I-1996, II-1998.
- *Lennart Lynge Andersen*: Lærebog I Fondsret, 3 udg., Gjellerup 2002
- *Lennart Lynge Andersen*: Fra stiftelse til fond. Gjellerup 2002.
- *Rasmus Kristian Feldthusen*: Trusts, Forlaget Thomson GadJura, 2002.
- *Christen Boye Jacobsen m.fl.*: Erhvervsdrivende fonde – en lovkommentar, FSRs Forlag, 1989.

3.4. The Taxation of Capital Gains on Shares Act (in Danish: Aktieavancebeskatningsloven)

For companies, taxable capital gains are included in the taxable income and taxed at the corporate tax rate (2004: 30%).

For individuals, a distinction is made between income and capital gains. However, if a person is in business selling shares etc., related profits and losses will be taxable as personal income.

See e.g.:

- *Søren Rasmussen, Preben Underbjerg Poulsen: Aktieavancebeskatning*, FSR's Forlag, 1995.
- *Eivind Christiansen: Beskatning af aktionærer*, 3. udg. Forlaget magnus, 1998.

3.5. The Taxation of Gains on Securities, Claims and Foreign Currency Act (in Danish: Kursgevinstloven)

The gains on Securities and Foreign Currency Act contains the Danish legislation regarding taxation of gains on securities and foreign currency.

See e.g.:

- *Anders Oreby Hansen m.fl: Kursgevinstloven med kommentarer*, DJØF's Forlag, 1998.
- *Christen Amby m.fl.: Kursgevinstloven 1994 med kommentarer*. Skattekartoteket 1994.
- *Christen Amby m.fl: Skattereformen og kursgevinster*, 1986.

3.6. Tax Assessment Act (in Danish: Ligningsloven)

The tax assessment act includes the Danish rules regarding arms-length (§2), anti-avoidance rules regarding “double dip” and general tax assessment issues.

See e.g.:

- *Mette Klingsten, Henrik Peytz: Ligningsloven med kommentarer*, DJØF's Forlag, 2000.

3.8. Merger Tax Act (in Danish: Fusionsbeskatningsloven)

The merger tax act contains the tax rules regarding tax-free mergers. The Act is also the Danish implementation of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

See e.g.:

- *Michael Serup: Fusionsskatteloven med kommentarer*, Thomson GadJura, 2. edt., 2003.

3.9. Depreciation Tax Act (in Danish: Afskrivningsloven)

The Depreciation Tax Act contain the tax rules regarding depreciation of tangible and intangible assets.

See e.g.:

- *Jens Drejer, Hanne Søgaard Hansen: Afskrivningsloven – en lovkommentar*. Forlaget Magnus 1998.

3.10. Pension Returns Tax Act (in Danish: Pensionsbeskatningsloven)

A pension with running disbursements will normally entitle the beneficiary to running benefits from his 60th year of age or later and until he dies. Disbursements are to be included in the personal income.

See e.g.:

- *Ole Andreasen m.fl.*: Pensionsbeskatningsloven med kommentarer, 2. udg. Forsikringshøjskolens Forlag 2002

4. Administrative Material

In order to ensure uniform application of tax law, the Danish Tax Authorities issue instructions. The primary instructions are:

- The Assessment Instruction (Ligningsvejledningen), covering the whole area of direct taxes. The instruction can be found at www.toldskat.dk, under “vejledinger”.
- The VAT instruction (Momsvejledningen). The instruction can be found at www.toldskat.dk, under “vejledinger”.
- The procedural instruction (Procesvejledningen). The instruction can be found at www.toldskat.dk, under “vejledinger”.

These instructions are issued every year and are only binding for tax authorities, not for taxpayers, courts etc.

5. Case law

In general no free of charge tax law database is found regarding case law. Legal publishers however offer such products (e.g. Skat og Erhverv by Magnus Informatik A/S and Revisors Bibliotek by Thomson).

Recently case law is now available for free on the internet at www.toldskat.dk, under “nyheder” (detaljeret: juridiske nyheder”). The database is however not systematic.

Older case law can be found in Danish periodicals UfR (Ugeskrift for Retsvæsen) and TfS (Tidsskrift for Skatter og Afgifter) in the relevant year.

6. Treaties, Textbooks and other books

In addition to the commentary books, there are numerous textbooks and treaties. Some of the major are the following:

- *Aage Michelsen, Steen Askholt, Jane Bolander, John Engsig*: Lærebog om indkomstskat, 2003, Jurist- og Økonomforbundets Forlag
- *Henrik Dam m.fl.*: Skatteret – Almen del. Magnus Informatik A/S, 2003
- *Henrik Dam m.fl.*: Skatteret – Speciel del. Magnus Informatik A/S, 2003.
- *Anders Oreby Hansen, Nikolaj Bjørnholm*: Lempelse af dobbeltbeskatning, Magnus Informatik A/S, 2002.
- *Aage Michelsen*: International Skatteret, 3. udg., Thomsons Forlag GadJura, 2003.

- *Jens Olav Engholm m.fl.*: Skatteretten 1-3, 3. udg., Forlaget Thomson GadJura, 1999 og 2000.

7. Periodicals

As a main rule, all Danish tax journals are in Danish. However, sometimes authors publish a text in English in a Danish tax journal. The most important tax journals in Denmark are:

- Tidsskrift for Skatter og Afgifter (Journal of Tax Law), Magnus Informatik A/S
- Skat Udland, Magnus Informatik A/S
- Skattepolitisk Oversigt, Forlaget Thomson
- SR Skat, Forlaget Thomson
- Revision & Regnskabsvæsen, Forlaget Thomson

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