



INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

General Communication with Tax Authorities in friendly or unfriendly ways

Tax Commission – of course...!

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National Report of Denmark

Arne Riis

Bech-Bruun, Law Firm
Langelinie Allé 35
2100 Copenhagen Ø
Denmark

+45 7227 3322

ARI@bechbruun.com

General Reporters:

<p>Dr. Christian Presoly Batliner Gasser Rechtsanwälte Marktgass 21 FL 9490 Vaduz</p>	<p>Gustavo Yanes Hernández Monereo Meyer Marinel-lo Abogados Alfonso XII, 30, 5º E 28014 Madrid</p>
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T: +423 236 0480
presoly@batlinergasser.com

T: +34.913 199 686

gyanes@mmmm.es

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1. Introduction

Tax authorities – surely each one of us had the pleasure to deal with one: as taxpayer at least with the tax authority of the country you are resident of, as a lawyer helping others in tax matters you might have had the chance to deal with the tax authorities of other countries as well. If the latter is the case you might have seen some differences in the behaviour of the different tax authorities. You might have realized that the tax authorities in some or even the majority of the countries do treat the taxpayers not as their customers or clients but rather as subordinates. In such cases the communications tends to be rather hierarchical and often results in administrative proceedings against the tax authorities with more or less success.

Other countries have realized that treating the taxpayer in ways like we know from the tale of Robin Hood and the Sheriff of Nottingham only results in the tax payers trying to circumvent their tax obligations. Some countries, thus, have not only reduced the taxes in their countries. They also made their tax authorities treat the taxpayers as their clients e.g. in offering the taxpayers the possibilities for tax rulings and trying to take a more tailored approach towards their taxpayers.

These – sometimes very significant – differences are what we are focusing on in this year's tax report: We want to show that there are big distinctions in the behaviour of and the dealing with the tax authorities in different countries both in the stage of an advance agreement on a tax position as well as in an objection or litigation phase. For this reason AIJA members from several countries around the globe were so kind to volunteer as national reporters for this report which is crucial for such a comparative topic.

The General Reporters would like to thank you all in advance for your contributions and are already very interested in the results of this year's annual congress session of the AIJA Tax Commission.

2. Questionnaire

Note: General assumption is discussions with the tax authorities regarding (corporate) income tax or indirect taxes. If a difference would apply in the treatment between either of these, please indicate in your report. Also, if there are different levels of tax authorities for different taxes or issues, please mark that in your report.

2.1 Communication general

How does the General Communication with the Tax Authorities take place?

- a. Is a direct contact in between the tax payer and the Tax Authorities possible/common/advisable?

Direct contact between a corporate taxpayer and the tax authorities is both possible and common in Denmark, and can indeed be the fastest way to solve a practical reporting issue, correct information which the tax authorities have registered regarding the taxpayer or obtain general guidance on simple tax queries. The tax authorities are under the same general guidance obligation as all other public authorities, and are generally accessible and easy to contact via e-mail or telephone.

Whether direct contact between the taxpayer and the tax authorities is advisable depends on the specific situation – the complexity of the relevant tax area, the professionalism of the taxpayer, potential risks involved etc. For example in situations where there is a risk that the tax authorities may find that the taxpayer have not acted in perfect compliance with the tax rules, it can be advisable for the taxpayer to leave all communication with the authorities to a tax council, who can assist in bringing the taxpayer's affairs in compliance with the relevant tax law. Especially where there is a risk of criminal law sanctions, high amounts of interest or burdensome liability involved, it is advisable that the communication takes place solely between the tax counsel and the authorities.

- b. If not, does the communication only take place via tax counsels?

(Not applicable).

- c. How can the communication regarding special matters be described?

Even after a specific tax case has arisen, the tax authorities are generally cooperative and interested in solving the tax case in a materially correct way. The examples of aggressive employees with the tax authorities are rare, and the communication is mostly polite and objective.

- d. Does it take place only in a written form or are meetings possible?

Meetings are possible to arrange, and are in some situations the advisable way to ensure that the tax authorities have fully understood all factual circumstances of a case as well as the position of the tax advisors and the taxpayer. Meetings in connection with a special tax matter, for example where the tax authorities have suggested an increase in the taxpayer's taxable income will normally be held with participation of a tax advisor but there is no requirement that an advisor is present.

- e. Can the behaviour of the Tax Authorities in your country be described as all dominant, cooperative, customer-oriented or otherwise?

The Danish tax authorities can generally be described as cooperative and professional in their communication with the taxpayers and with the tax advisors. They are subject to a general guidance obligation, an obligation to act impartially as well as an obligation to ensure that the tax cases are decided objectively and based on sufficient information, entailing, inter alia, that the tax authorities must request further information from the taxpayers and, to some extent, independently investigate the taxpayer's matters if the basis for making a correct assessment is considered insufficient.

2.2 Agreements between tax payers and tax authority

- a. Is there the possibility of a tax ruling and, if so, which costs can be expected?

Under Danish tax law it is possible for taxpayers, corporate as well as individuals, upon request to obtain a private letter ruling from the tax authorities regarding tax consequences of a specific action or arrangement. The private letter ruling is often obtained in connection with a contemplated transaction, such as for example a contemplated restructuring of a company, considered disposal of assets etc.

Generally, private letter rulings can be obtained for all taxes – direct as well as indirect – except for questions relating to customs duty, which is ultimately subject to the EU Commission's competence. Further, the tax authorities cannot via the private letter ruling instrument issue authorizations, licenses or specific dispensations for the

taxpayer. A precondition for obtaining a private letter ruling is, additionally, that one or more taxpayers have a specific and material interest in obtaining the ruling; questions which are hypothetical, vague or theoretical will not be answered in private letter rulings.

If the private letter ruling is regarding the tax position or tax consequences for the taxpayer requesting the ruling, the ruling can be obtained for planned as well as for already completed transactions.

Where, on the other hand, the requested ruling is regarding the tax consequences for *other* taxpayers than the taxpayer submitting the request with the tax authorities, the questions can only be concerned with actions in contemplation. An example of a situation where a private letter ruling can be relevant to obtain regarding the tax consequences for other taxpayers is where an employer considers granting benefits in kind to its employees and wishes to clarify the tax consequences triggered for the employees before taking the decision.

The costs of obtaining a private letter ruling largely depend on the complexity of the requests and the contemplated transaction, as the greater part of the costs will typically be the costs of legal advisors carefully drafting the requests to ensure that the ruling from the tax authorities fulfills the exact purpose of obtaining it, and that the tax authorities take all relevant information into consideration when answering the questions submitted. In addition to the tax advisors' fees, a small fee must be paid to the tax authorities, currently DKK 400 (approximately EUR 50), regardless of the number of questions raised in the requests and the number of taxpayers governed by the requested private letter ruling.

It should be stressed, that whereas it is for the more complex tax questions advisable to leave the drafting of the request for private letter rulings to tax experts, it is not mandatory. If the questions are sufficiently unambiguous and the request contains all relevant information, the tax authorities will also issue private letter rulings based on requests directly from the taxpayers. If the request does not contain sufficient information for the tax authorities to give a concise answer without ambiguity, the tax authorities will request further information, answer with certain reservations or reject the request.

b. What is the average time frame to get a tax ruling done?

Averagely, the time frame for obtaining a private letter ruling is 2-3 months from the date of submission. However, if the questions raised are considered to be complex, of general public importance or is concerned with new tax rules, the tax authorities will submit the request before the National Assessment Council (an upper-level administrative body, "Skatterådet"), increasing the average processing time to 5-9 months. An example of an area where all the requests for private letter rulings where for a period of time submitted to the National Assessment Council last year was questions relating to the definition of "hiring out of labor", due to a legislative amendment of this definition.

- c. Are these consultations binding and, if so, which possible remedies do exist?

The private letter rulings are binding for the tax authorities and must be respected in connection with the later tax assessments regarding the taxpayer. However, the binding effect is generally limited to 5 years after the date where the taxpayer received the ruling.

In addition to the direct binding effect that can be claimed by the addressee, the private letter rulings have precedential value in line with other administrative decisions issued by the tax authorities. Due to the general principle that equal situations must be assessed in the same way for tax purposes, the tax authorities must respect the conclusions in private letter rulings in other similar situations.

Whereas the tax authorities are, subject to certain limitations, bound by the private letter ruling when assessing the tax consequences of the transaction, the taxpayer can choose to appeal against the private letter ruling or to report the concerned transaction in the tax return in accordance with the taxpayer's own perception of the tax rules.

- d. Once a tax ruling between all the parties concerned has been achieved, can one rely on it?

Provided that the taxpayer gave the tax authorities all the relevant, correct and accurate information on the contemplated transaction necessary for the qualification of the transaction for tax purposes when obtaining the ruling, the taxpayer can rely on the answers.

Reliance on private letter rulings can, naturally, not be claimed if relevant factual circumstances change subsequently. Further, if the legal basis for the private letter ruling is amended afterwards, the taxpayer cannot necessarily continue to rely on the ruling. Especially legislative changes can, subject to the provisions for introduction and transition, limit the binding effect of a prior private letter ruling.

- e. What is the exact legal status of a tax ruling?

A private letter ruling is an administrative decision regarding the tax consequences of a specified disposition; accordingly, the legal status is the same as administrative practices in general.

- f. Is it common in order to get a tax ruling that the tax payer has to give up certain rights or explicitly agree to e.g. information exchange?

Since the taxpayer has a legal claim for a binding ruling, if the questions are sufficiently unambiguous and within the scope of the private letter ruling instrument, the taxpayer

does not have to give up on rights or make otherwise make compromised with the tax authorities to obtain a tax ruling.

- g. Is a tax ruling a public document or will it be treated confidentially by the tax authority? Does the taxpayer have an obligation to keep it confidential?

The tax authorities are governed by their general duty of confidentiality, when they issue a tax ruling, and all information given in connection with the private letter ruling procedure is, accordingly, confidential. However, all private letter rulings issued by the National Assessment Council (the upper-level administrative body), are considered to be of interest to the general public (or at least for taxpayers in the same position). These decisions are for this reason published in a depersonalized version on the tax authorities' webpage. Only where sufficient depersonalization is considered impossible, the ruling will not be published.

There is no general obligation for the taxpayer to keep the ruling confidentially. On the contrary, a private letter ruling can be relevant to obtain for example on behalf of the target company in connection with a contemplated sale, where the whole purpose of obtaining the ruling is to share the ruling with vendor subjects in the due diligence process.

Even though there is no *general* obligation for a taxpayer to keep a tax ruling confidential, such duty of confidentiality can be a consequence of the tax ruling containing information on other taxpayers or information subject to a contractual confidentiality obligation.

2.3 Remedies against decisions of the Tax Authorities

- a. Is it common that one has to litigate if a decision has been made by the Tax Authorities and which remedies do exist?

Whereas it is relatively common to appeal a tax decision within the administrative system, litigation before the courts is rarer in tax cases. In a recent analysis from CEPOS (an independent Danish think tank), almost 4,000 tax cases were appealed to the National Tax Tribunal in 2011, and 297 tax cases were brought before the Danish courts by the taxpayer¹. Since the tax authorities are obliged to send a letter outlining the intention to make a certain decision prior to actually making the decision, administrative appeal and litigation before the courts can often be avoided, based on the taxpayer's objections to the decision when the decisions are still only in the contemplation.

¹ Analysis published April 2013 at http://www.cepos.dk/fileadmin/user_upload/dokumenter/2013-04/Notat_Statens_udgifter_til_kammeradvokat_og_omkostningsgodtgoerelse_i_skattesager_april13.pdf (last visited 4 February 2014).

If the taxpayer wins a case against the tax authorities, with the administrative appeal authorities or in a court case, the taxpayer can claim a refund of the taxes (if already paid) and such repayment is subject to interest. Damages are almost never (successfully) claimed from the tax authorities based on tax decisions set aside by the courts.

- b. Is there the possibility of addressing a court or is this an administrative procedure?

A decision from the tax authorities cannot be brought directly before the courts, except from in situations where the administrative appeal proceedings have taken more than 6 months.

After an appeal within the administrative system, the taxpayer can address a court. Or, especially in cases where the complaint is due to the tax authorities' neglect of general obligations under administrative law, the taxpayer can address the independent ombudsman institution ("Folketingets Ombudsmand") with a complaint.

The first instance appeal is an administrative procedure, where the cases are appealed to either the National Tax Tribunal ("Landsskatteretten"), or to the local Tax Board of Appeals ("Skatteankenævnet") depending on the type of tax case and which appeal authority the taxpayer prefers. Generally, whereas all cases concerning corporate taxpayers are appealed to the Tax Tribunal, cases concerning individual taxpayers can be appealed to either the Tribunal or to the local Tax Boards of Appeal, depending on the taxpayer's own choice.

The competence of the National Tax Tribunal includes all types of indirect taxes, such as VAT, energy duties etc., and the Tax Tribunal is competent also with regards to tax cases involving EU law.

- c. Which costs are to be expected in such a case?

When a tax decision is appealed within the administrative system, only a small fee of DKK 400 in 2014 (corresponding to approximately EUR 50) is charged. This amount is refunded, if the taxpayer wins the case, fully or for the majority of the disputed amount, in either the administrative appeal system or during a subsequent court case.

The court fee depends on the disputed amount, but cannot in first instance tax cases exceed DKK 2,000 (2014), corresponding to approximately EUR 270.

The main costs when appealing against a tax decision is undoubtedly the fees paid to lawyers and accountants. In case of a successful appeal against a decision from the tax authorities, individual taxpayers have a right to a full refund of (a fair amount of) fees paid to tax advisors assisting in the appeal case. If, on the contrary the tax authorities are considered to have won the appeal case, the individual taxpayer has a right to 50 %

refund of such qualifying fees paid to advisors. This refund of costs related to appeal of tax decisions, only apply to individual taxpayers. For individual taxpayer refunds are also given where the tax case concerns the taxpayer's business, including where such business activity is carried out in a partnership.

Corporate taxpayers cannot seek such refund of the costs related to appeal of tax cases. Instead the corporate taxpayers can, subject to certain conditions, deduct their costs for tax purposes as a business expense (corresponding to a tax value of 24.5 % with the current tax rate). This differential treatment of complainants carrying out their business in partnerships and via a company respectively has been heavily criticised.

d. Is it compulsory to have a lawyer in case of any remedy?

There is no requirement that an administrative appeal case be handled by a lawyer, and it is common that the administrative appeal is handled by either the taxpayers themselves or by their accountants. Especially for judicially complex cases, cases where sanctions are foreseeable or cases where subsequent court litigation can be expected, it is often advisable to have a tax lawyer assisting already during the administrative appeal.

With very few exceptions, only qualified lawyers are entitled to appear in court cases on behalf of others. The taxpayers are allowed to appear in their own cases, corporate taxpayers typically being represented by the managing director, but the majority of court cases are handled by lawyers.

e. What timeframe can be expected in case of a remedy/litigation?

The average timeframe for an administrative appeal with the National Tax Tribunal is approximately 8 months².

The timeframe for court cases regarding tax matters varies significantly depending on the specific case³. With the Danish City Courts (the lower courts), the average timeframe is approximately 1.5 year for civil cases. For High Court cases, the average timeframe for first instance civil cases is approximately 22 months, and for appeal cases 1 year. Averagely, a Supreme Court case with oral hearing in a civil case takes 19 months. The reality is, however, that a court case can take much longer, especially for cases involving EU law.

² According to the most recent annual report from the National Tax Tribunal for 2012, published at <http://www.landsskatteretten.dk/public/dokumenter/aarsrap2012.pdf>, (last visited 4 February 2014).

³ Statistics from the Danish Courts 1st quarter 2013, available at <http://www.domstol.dk/om/Nyheder/Pressemeddelelser/Pages/Domstolenessagsbehandlingstiderfaldti1kvarter1.aspx> (last visited 5 February 2014).

- f. Is it possible to postpone the payment of the tax debt as assessed by the tax authority until the end of a pending litigation with the tax authority? Will the tax authorities require guarantees for the postponement (Bank guarantees, mortgages etc.)?

The taxpayer can apply for a postponement of the payment of the disputed tax debt as long as an administrative appeal case or a court case is pending. If the tax case is still pending after four years, a new application must, however, be submitted to continue the postponed payment.

If a postponement is granted, interest continues to accrue on the tax debt, with a rate of 0.8 % for every month or part of a month until payment is effected, in order to ensure that taxpayers do not appeal simply for liquidity purposes.

The tax authorities can reserve the right to off-set postponed tax debt against future surplus taxes and can further require a guarantee if the tax authorities have a reasonable suspicion that the taxpayer may not otherwise fulfill the payment obligation when due. Generally, the tax authorities grant postponement without guarantee requirement, unless the taxpayer is planning to move abroad, already has a default on tax debt etc.

- g. Is it possible that the tax authorities submit a report to the public prosecutor to investigate on possible criminal tax offences and under what circumstances?

In cases where the tax authorities lack the competence to close a tax case involving criminal actions or omissions with a fixed-penalty notice, the tax authorities must report the taxpayer to the police, where the public prosecutor will investigate the possible criminal offences.

The conditions for closing a criminal tax case administratively are that the relevant sanction is monetary – as opposed to custodial sentences, and that the taxpayer admits the criminal offence.

- h. Is it possible to include a clause in an agreement to automatically amend this agreement in accordance with the outcome of a discussion or litigation with the tax authority (e.g. if an “at arms length payment” is not accepted as such by the tax authority or if interest are held to be dividends or a loan is seen to be a gift)?

It is, subject to certain formal and substance requirements, possible to insert a clause in contracts, whereby the agreement is made conditional upon specific tax consequences,

and where the contract is automatically rescinded or amended if the tax consequences of the disposition are different from what the parties presupposed when negotiating the agreement.

Such clauses are particularly relevant for transactions carried out between group related parties, where the clause is included in the contract to provide the parties with an option of either rescinding from the agreement or amending the terms of the agreement into terms which the tax authorities can acknowledge as “arm’s length terms”.

Reservations for tax effects are only accepted by the tax authorities if aimed at the civil law substance of the agreement, if the reservation is taken in advance and if the fulfilment of the preconditions is something outside the control of the parties. Further, the clause must be sufficiently clear, in writing and declared to the authorities. Regarding the declaration requirement, it is sufficient if the taxpayer discloses the original agreement with the reservation upon request in connection with the tax assessment.

2.4 Sanctions

- a. What is the statute of limitations for tax related matters?

The general rule is that a tax assessment on the tax authorities’ initiative must be completed before 1 August in the fourth year after the end of the relevant tax year, and that the taxpayer must be notified of the contemplated assessment prior to 1 May the same year. The time limit for amending tax assessments is, however, extended to 1 May in the sixth year after the expiry of the tax year for certain types of group restructuring, and where the amendment is caused by a transfer pricing adjustment or similar types of adjustments of “controlled transactions”.

The described time limits for tax assessments, do not apply in certain situations where the specific circumstances of the case call for a longer time limit – especially where the taxpayer have acted grossly negligent. In principle, there is no upper limit for these extraordinary tax assessments. However, outside the tax law legislation there are general statute of limitation rules which, in the cases governed by the extended time limit for extraordinary tax assessment, will normally lead to the tax claims being statute barred after 10 years.

- b. What is the typical sanction/amount of fines in your jurisdiction? Is there a different fine level for direct or indirect taxes?

For case relating to direct taxes as well as for VAT-related matters, the starting point for intentional tax evasion is a monetary sanction of twice the evaded tax amount, when the amount is below DKK 250,000 (approximately EUR 33,333). For evasion where the taxpayer is considered to have acted grossly negligent the normal sanction level is one time the evaded tax amount. However, for the first DKK 60,000 (approximately EUR

8,000) of evaded tax the sanction will be limited to one time the evaded amount for intentional tax evasion and half the evaded amount for gross negligence.

In addition to these monetary sanctions the taxpayer will, naturally, be required to pay the evaded amount with interest.

Where the tax evasion is considered intentional, and the evaded amount of tax exceeds DKK 250,000 (approximately EUR 33,333), individual taxpayers further risk prison sentences of up to 1.5 years. For tax evasion amounting to more than DKK 500,000 the prison sentences for individual taxpayers can be up to 8 years for intentional evasion.

- c. Is it possible for a taxpayer to prevent tax penalties to be imposed should he/she be able to prove her good faith or reasonable interpretation of the law?

Tax evasion is solely sanctioned if intention or gross negligence can be established by the prosecutor. Accordingly, the taxpayer can prevent tax penalties by proving, that the breach of tax provision was, at the most, caused by ordinary negligence. Establishing good faith or reasonable interpretation of the law can be an effective element in preventing tax penalties. The general principle that ignorance of the law is no excuse does, however, apply to tax cases as well, and the taxpayer cannot always avoid sanctions for gross negligence even where ignorance of the relevant tax provision can be established. If the taxpayer can prove that the actions or omissions were based on advice from accountants, tax lawyers etc. it can be a mitigating factor - but will not automatically lead to exemption from prosecution.

- d. Is it possible to regularize your tax situation with reduced or no fines/sanctions?

Provided that the self-reporting is considered to be fully voluntary, the taxpayer can regularize taxes without triggering any sanctions or with limited sanctions, depending on the specific circumstances. The condition that the self-reporting must be fully voluntary entails that self-reporting has no effect if the tax authorities can prove that the reporting was made in a situation where the taxpayer was expecting the tax case to arise anyway.

If the self-reporting is considered fully voluntary, sanctions will not be levied in cases of gross negligence and in cases of intentional tax evasion of DKK 100,000 or less (approximately EUR 13,300). If the evaded amount exceeds this threshold the self-reporting will generally reduce the sanctions. However, even where the taxpayer has made a fully voluntary self-reporting, intentional tax evasion concerning amounts over DKK 500,000 (approximately EUR 66,700) will for individual taxpayers be sanctioned with unconditional prison sentences.

For a limited time period ending 30 June 2013 Danish taxpayers – individual as well as corporate – with undisclosed funds abroad were granted an opportunity of voluntarily

declaring these funds to the Danish tax authorities at a reduced penalty and without risking prison sentences. It has been discussed politically to reintroduce the tax amnesty, but so far another tax amnesty does not appear to be in the political pipeline.

- e. May tax advisors/tax lawyers be held responsible by the tax authority for their advice to taxpayers?

In cases where professional liability can be established, tax advisors can be held responsible for their advice to taxpayers by way of a fine. The sanction depends on the amount of evaded tax and has until now been between DKK 5,000 and DKK 50,000 (EUR 667-6,700). Incorrect or insufficient tax advice can additionally be sanctioned as a breach of the professional code of conduct for lawyers, but such a sanction is not levied by the tax authorities.

In reality, sanctions are rare for faulty tax advice. The real risk for tax advisors is damage claims from the taxpayers for losses suffered due to insufficient or incorrect tax advice.

2.5 Tax information exchange

- a. Does a tax information exchange on the EU level or OECD level happen and how does it take place?

Denmark has a long history of entering into the international linkages necessary to effectively exchange information relating to tax matters, and was in the most recent OECD peer review considered to be in full compliance with the international standards of transparency and exchange of information issued by the Global Forum on Transparency and Exchange of Information for Tax Purposes and described as having an excellent framework for effective exchange of information⁴.

Today Denmark has a fine-meshed net of information exchange relationships of different kind, and currently exchanges information with more than 120 jurisdictions⁵ through (i) double tax conventions containing an exchange of information clause, tax information exchange agreements, (ii) the multilateral Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters, and via (iii) the Convention on Mutual Administrative Assistance in Tax Matters between OECD and the Council of Europe, which Denmark signed as one of the five initial parties to the convention.

⁴ OECD (2013), Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Denmark 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings, OECD Publishing.

Further, exchange of information takes place based on EU law⁶, and as from January 2013 based on the FATCA agreement between Denmark and the US.

Since 2007 Denmark has embarked on a project of renegotiating existing double tax agreements with the purpose of inserting information exchange mechanisms.

All requests for information from tax authorities in other countries must go through the competent subdivision of the Danish tax authorities, which is also the competent authority when Denmark is requested to exchange information. If, however, the requested tax information is for a criminal proceeding (tax fraud etc.), the contact will normally go through the Danish police or the prosecution.

As stated in the Global Forum peer review for Denmark⁷, many of the requests made to Denmark from foreign tax authorities can be answered by the Danish tax authorities based on information already gathered for the purpose of national tax assessment etc., or information which the authorities can find in the public databases. If the information is not immediately accessible, the Danish tax authorities have various opportunities of obtaining information, including bank, ownership, identity and accounting informations, and powers to compel the taxpayers to produce and disclose information necessary for tax purposes.

- b. Does your country enter into tax treaties that oblige to exchange information spontaneously, automatically and/or upon request?

The tax information exchange agreements and double tax conventions entered into by Denmark provide for exchange of foreseeably relevant information upon request, and access to conduct tax investigations within the territory of the other country upon request and with written permission from the tax authorities in the host country.

Some of the treaties, including for example the treaties with the US, Germany, and the Nordic countries, additionally oblige Denmark to exchange information automatically and spontaneously in certain situations, such as where the Danish tax authorities have grounds for supposing that there may be a loss of tax in the other contracting state, if the information is not forwarded, or where there is grounds for supposing that a saving of tax may result from artificial transfers of profits within a group of enterprises.

Under the EU Council Directive on taxation of savings income in the form of interest payments⁸ effective taxation of interest is ensured via automatic exchange of information and reporting. Denmark is under the Directive obliged to gather information every year on outbound interest payments to EU recipients and report the

⁶ By virtue of the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation, The Council Directive 2003/48/EF of 3 June 2003 and various other directives regulating VAT and excise duties.

⁷ OECD (2013), Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Denmark 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings, OECD Publishing, page 8.

⁸ The Council Directive 2003/48/EC of 3 June 2003.

information at the end of each year to the tax authorities in the EU member state where the recipient is resident.

On 15 November 2012, Denmark and the US signed a treaty to implement the US Foreign Account Tax Compliance Act (FATCA) regulations into Danish law. The impact of the bilateral Treaty is that Danish banks and financial institutions are enabled to comply with the FATCA regulations by reporting to the Danish tax authorities instead of being required to report to the US Internal Revenue Service (IRS). After receiving the information from the taxpayers, the Danish tax authorities will be required automatically to pass on the relevant information to the IRS.

It should be emphasized, that some of the information exchange clauses in the various types of agreements which Denmark is a party to also cover information exchanged for the purpose of assessing and collecting indirect taxes and duties.

- c. Is the tax payer notified in case information is exchanged with foreign tax authorities?

In line with the EU case C-276/12, the Danish tax authorities consider neither requesting information from foreign tax authorities nor providing information to tax authorities under the exchange of information agreements to be administrative case handling where it is necessary to notify the taxpayer. The information exchange is merely considered investigation and the taxpayer/the taxpayer's advisor is generally not notified.

- d. Can the tax payer object against an exchange of information?

The taxpayers are generally not informed of the request or the contemplated exchange of information, and have, accordingly, no possibility of objecting.