

# Transfer Pricing

## Practice area under Tax

For several years, transfer pricing has been the largest and most profitable key action area for the Danish Customs and Tax Administration (SKAT). Moreover, transfer pricing is the tax assessment area posing the biggest problems in terms of legal protection to businesses.

One reason for the very sharp increases, is the fact that SKAT, often based on very shallow foundations, disregards TP documentation. The result of this is that SKAT makes estimated tax assessment, and that the appeal and court system is not yet sufficiently geared up for handling TP cases. Moreover, MAP (mutual agreement procedure) does not guarantee that double taxation will not take place, and the Arbitration Convention only applies within the EU.

This being the case, a great need exists for TP cases to receive strategic advisory services and process experience as early as during the tax assessment process.

### **Our competences – strategic advisory services and litigation**

Plesner lends assistance in TP cases involving total increases in excess of DKK 25 billion.

Normally, we become involved during the tax assessment process, including in negotiations with SKAT, and most often in collaboration with the business's daily tax consultant.

Plesner does not draw up TP documentation or make valuations. We do what we do best – that is provide strategic advisory services and conduct TP cases. In that connection, we also have extensive experience in closing TP cases through settlement.

In 2014 as well as in 2015, Plesner received the "Transfer Pricing Firm of the Year" prize for Denmark, which is awarded by the International Tax Review.

In 2002, Plesner won a case before the Danish National Tax Tribunal, which is regarded as the first actual transfer pricing case, and which involved a pharmaceutical company's assignment of rights to a (yet to be completed) pharmaceutical product to its foreign parent company.

Since then, no material decisions have been rendered by the Danish National Tax Tribunal on transfer pricing, and no landmark decisions based on the current rules on TP documentation have been made by the Danish National Tax Tribunal or the courts.

Therefore, authoritative clarification is called for in a series of key transfer pricing issues, and this fuels the pronounced uncertainty regarding legal protection in the area.

### **Pending cases**

The vast majority of cases in which Plesner provides assistance are either pending before SKAT or the Danish National Tax Tribunal. The cases involve significant problems such as the following:

- Valuation of intellectual property rights
- Whether assignment of intellectual property rights has taken place at all
- Determination of internal settlement prices for goods and services
- Determination of the rate of interest on intercompany loans
- Significance of the fact that a company has been running tax losses for a number of years
- Choice of valuation method
- Significance in terms of TP of moving the headquarters of a group abroad
- Significance in terms of TP of closing the production of a subsidiary due to rationalisation
- Whether section 4 of the Danish State Tax Act authorises determination of remuneration – not including cases where the rule on the arm's length principle of section 2 of the Danish Tax Assessment Act applies
- Whether TP documentation can be disregarded
- Significance of TP documentation being disregarded
- Questions about burden of proof
- Scope of the Danish National Tax Tribunal's and the courts' right of review of SKAT's estimated decisions
- The choice between appealing or instituting MAP negotiations/arbitration proceedings
- Whether the conditions for instituting the agreement procedure/arbitration proceedings under the Arbitration Convention have been met
- Determination of the right appeals body under the Arbitration Convention
- Commencement of APA (advanced pricing agreement) negotiations with or without rollback
- Whether the conditions for payment adjustment and reversal have been met
- Limitation
- Use of valuation experts before the Danish National Tax Tribunal

## Cases

**Case News** 18.06.2024

Sampo plc announces a public exchange offer to the shareholders of Topdanmark A/S

**Case News** 13.10.2023

The National Tax Tribunal reverses the case law of the Danish Tax Agency on additional taxation of foundations' tied-up funds on dissolution

**Case News** 30.06.2023

The Supreme Court finds in favour of the Ministry of Taxation in another "beneficial owner" case

**Case News** 24.05.2023

Viking Life-Saving Equipment A/S successful in extensive transfer pricing court case

**Case News** 04.05.2023

Danish Supreme Court rules against tax payers in two "beneficial owner" cases regarding interest

**Case News** 24.02.2023

Vækstfonden raises DKK 2.4 billion in Dansk Vækstkapital III

**Case News** 09.01.2023

The Danish Supreme Court has given its judgment in the first two Danish "beneficial owner" cases

**Case News** 20.09.2022

Danish insurance company Codan Forsikring successful in transfer pricing case before the Danish Eastern High Court

**Case News** 31.03.2022

The Eastern High Court reduces the Ministry of Taxation's interest claim significantly in beneficial owner case

**Case News** 04.03.2022

First Danish transfer pricing dispute decided in arbitration under the EU Arbitration Convention

**Case News** 25.11.2021

The Eastern High Court rules against the tax payers in two new "beneficial owner" cases

Case News

03.05.2021

The Eastern High Court rules in favour of NetApp in the "beneficial owner" cases

## Ratings



2024 The Legal 500

Within Tax, Plesner is a first tier firm.

"Their industry and practice knowledge is very strong"

"They have a detailed knowledge of tax and, combined with an incredible business understanding, they are able to turn a complex matter into a simple line of arguments to make a convincing story"

"Very experienced and competent within tax litigation and transfer pricing. Strong mindset around people"

"Responsive, convey technical legal matters well in general business terms"



2024 Chambers Europe

Plesner is listed in "Band 1" as regards Tax.

"The team is very experienced, knowledgeable and proactive in its approach"

"The lawyers are able to understand a problem holistically, and are very knowledgeable regarding practical case handling. They are always responsive and good at explaining complex matters to business teams"



2024 World Tax

Plesner is ranked in Tier 1 in the World Tax ranking as the only Danish firm across the three tax categories (General Corporate Tax, Transfer Pricing and Tax Controversy).



2023 The Legal 500

Within Tax, Plesner is a first tier firm.

"Best track record for tax litigation in Denmark. Highly skilled team"

"Strong analytic skills including the ability to mitigate complex matters"

"Great team work with different skill sets and very strong capabilities within transfer pricing and tax litigation"



2023 Chambers Europe

Plesner is listed in "Band 1" as regards Tax.

"The team at Plesner is excellent - easily the best in tax in Denmark, and one of the best in tax in Europe. The lawyers provide wonderful client service, are responsive and give cutting-edge advice"

"The lawyers are knowledgeable within tax controversy and transfer pricing. They are also very proactive"



2023 World Tax

Plesner is ranked in Tier 1 in the World Tax ranking as the only Danish firm across two tax categories (General Corporate Tax and Tax Controversy).

"Plesner is widely regarded as the leading Danish law firm for all areas of tax law, including tax litigation"



2022 The Legal 500

Within Tax, Plesner is a first tier firm.

"Very strong tax team, and in particular within tax litigation"

"They are truly outstanding, and have the rare ability to completely handle a case and offer very clear strategic advice"

"They have a team that works like clockwork, which supports the overall output of the work product being absolutely best in class and outstanding"

"Impressed by the way the partners work together in teams on large litigation cases. No other Danish law firm can offer such experienced teams to litigate complex tax cases"

"They draw on their superior litigation experience to identify solutions that will withstand governmental as well as public scrutiny, and – when relevant – utilise their vast network within the tax authorities for solution-oriented informal discussions"

CHAMBERS  
EUROPE

2022 Chambers Europe

Plesner is listed in "Band 1" as regards Tax.

"A trusted partner"

"Plesner is deeply aware of technical details on international tax matters and brings to bear experience from a wide range of international clients"

"The Plesner folks are always technically good, creative and very responsive"

## Our specialists

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