National report to the Nordisk Skattevidenskabelig Forskningsråds Annual Meeting, Oslo 2009

A.1.1.1. Under which conditions are non-resident workers liable to tax?

A.1.1.1.1. Domestic law

Limited tax liability
A foreign employee who works in Denmark, but does not fulfil the conditions for full tax liability in Denmark, see below (non-resident), will have limited tax liability on their earned income if the work is performed in Denmark and the salary is paid by a Danish employer or a foreign employer with a permanent establishment in Denmark; see the Tax at source Act (KSL) § 2(1) No 1.

The provision in KSL § 2(1) No 1 is worded so that income in the form of payment for personal services carried out in Denmark[1] incurs a limited tax liability. The form of payment is not relevant to the tax liability, nor is whether the right to the income or payment arises after the termination of the employment in Denmark; see KSL § 2(1) No 1, third point. Tax liability also covers severance payments, salary paid during a period of notice and similar payments, if such income is payable in connection with the termination of an employment relationship that has related to work carried out in Denmark and the salary paid has been subject to taxation in Denmark.

A foreign business can take on work in Denmark and carry out the work on its own account and at its own risk, using its own employees, subject to its directions and using its own equipment (‘Enterprise’). If a foreign employee works for a foreign employer in Denmark, the foreign employee will only be liable to tax in Denmark under Danish rules if the foreign employer has a permanent establishment in Denmark, so that the undertaking is subject to tax under KSL § 2(1) No 4 or under the Corporation tax Act (SEL) § 2(1)(a); see KSL § 2(8) No 2.[2]

Hired-out labour
A foreign employee who is hired out by a foreign business to a Danish business will be liable to tax on the payment that relates to the work for the Danish business. What is special about hiring-out labour is that the foreign employee continues to be employed by the foreign business, but that the Danish business exercises the normal rights of an employer etc. If the foreign employee has limited tax liability, the rules on hired-out labour in KSL § 2(1) No 3 can apply.

A foreign employee who is hired out to a Danish business can choose to pay tax at 30 % of the gross income, including any compensation to cover the costs of travel and lodging etc.; see KSL § 48 B. The Danish business withholds the tax even though the Danish undertaking is not the foreign employee’s employer. The withheld tax is regarded as the final tax. The foreign employee

[1] E.g., TfS 1999.689, LSR concerning compensation for removal costs that was not considered taxable in Denmark since, at the date of payment, the taxpayer had not performed work in Denmark and the compensation did not relate to business carried on in Denmark.
[2] *Aage Michelsen*: Lærebog om indkomstskat, 12th ed. p. 727.

cannot deduct any costs in calculating the tax. This arrangement can only be used by persons who have limited tax liability. If, during this period, the employee becomes fully liable to tax, then full tax liability will apply with retrospective effect, as from the first day. The arrangement is optional, and the foreign employee can, alternatively, choose to be taxed according to the general rules for limited tax liability, see KSL § 2(4), with the consequent possibility of making deductions from the taxable income.

It is important to distinguish hired-out labour from the situation of an enterprise, and this is reflected in the large number of requests for binding assessment notices from the National Tax Board.[3] If a case involves hired-out labour, the Danish business should withhold 30 % tax; see above. If the situation is considered to be an arrangement with an enterprise, the Danish business will not have obligations towards the Danish tax authorities with regard to the payment of Danish tax by the foreign employees. On the other hand, this can mean that the foreign employee has limited tax liability on the salary, as there is a risk that the foreign employer obtains a permanent establishment in Denmark.

A.1.1.1.2 Specific topics arising from Community law/the Nordic tax treaty?

According to Article 15(2)(d) of the Nordic Tax Treaty, in cases of hiring-out labour the right to tax is expressly accorded to the State where the work takes place, regardless of the 183 day rule. The concept of hired-out labour is more precisely defined in paragraph V of the protocol. This definition corresponds to what is understood as hiring-out labour under Danish law and in the interpretation of other tax treaties; see LV 2009-2 D.D.2.

The decision of the European Court of Justice (ECJ) in the *Schumacker* case (Case C-279/93) led to the introduction of provisions in KSL §§ 5 A – 5 D, according to which persons resident abroad who earn 75 % or more of their total income according to Danish tax law, with deductions for all expenses under State Tax Law § 6(1)(a), can choose to be taxed under KSL §§ 5 A – 5 D which, in principle, corresponds to the tax rules that apply to persons who have full tax liability under KSL § 1.

The ECJ's decision in the *Gerritse* case of 12 July 2003 (Case C-234/01), where the ECJ ruled, among other things, that, in the same way as persons with full tax liability, a musician with limited tax liability should be entitled to calculate his income as net income, and could thus make deductions for his business expenses, has led to the amendment of KSL § 2(4), so that a person who is a hired-out worker can choose to be taxed as if they have limited tax liability under KSL § 2(1) No 1; see Law No 221 of 31 March 2004 (L 119).[4]

[3] See, most recently, TfS 2009, 209 SR and TfS 2009, 581 SR.
[4] *Niels Winther-Sørensen*: Skatteretten 3, 4th ed., 2006 p. 447 ff.

A.1.1.2 Under which conditions do migrant workers become tax residents – a brief description

A.1.1.2.1 Domestic law

As a rule, in order to become fully liable to tax a person must be resident in Denmark, see KSL § 1(1) No 1,[5] or the person must be continuously present in Denmark for more than 6 consecutive months, without having a residence in Denmark; see KSL § 1(1) No 2.

In deciding whether the conditions for residence are met, there is an emphasis on whether the person in question, by establishing a home, renting a residence or by other measures, has indicated an intention to reside in Denmark. There are two elements to the concept of residence: an objective element, i.e. whether the taxpayer has a residence available in Denmark; and a subjective element, i.e. whether by their conduct the taxpayer has indicated whether they want to be resident in Denmark or abroad.[6]

If a taxpayer has access to a year-round residence in Denmark, this access is a necessary and sufficient condition for establishing residence.[7] Where the taxpayer merely has the possibility of using a residence, for example belonging to another person, it will be necessary to take into account the taxpayer's intention and linking factors other than the residence.[8]

If there is full tax liability as a consequence of residence, the tax liability will first arise when the taxpayer takes up residence in Denmark; see KSL § 7(1). A short stay, for holiday, will not lead to full tax liability. However it is a well established assumption in practice that, even in the case of a temporary stay in Denmark, full Danish tax liability can arise if during their stay the taxpayer carries out work in Denmark, since such a stay cannot be regarded as a temporary stay for the purpose of holiday or suchlike.[9] The Supreme Court has found that the stay in Denmark of a Danish-American director for a maximum of 1 year, during which he had 2 year-round residences available, could not be regarded as a short term stay. In the view of the Court, the fact that he had a residence in the USA did not prevent him from being regarded as being resident in Denmark for the purpose of taxation. A stay in Denmark of about 1 year could not be regarded as a temporary stay under KSL § 7(1); see TfS 1990, 465 H.

In practice, an uninterrupted stay in Denmark lasting more than 3 months or a total stay of more than 180 days within a 12 month period is not regarded as being a short term stay for the purpose of holiday or suchlike.[10] If a person is fully liable to tax under KSL § 1(1) No 2, the liability arises with effect from the start of the stay in Denmark; see KSL § 8(1).

If a taxpayer begins by making a short term stay in Denmark and subsequently takes up residence in Denmark, the tax liability arises from the start of the short term stay, and not from the date on

---

[5] For a more detailed review of the concept of residence, see Lærebog om indkomstskat, 13th ed., p. 715 ff.
[6] Lærebog om indkomstskat, 13th ed., p. 715.
[7] LV D.A.1.1 and in practice a large number of other decisions and judgments; see e.g. most recently TfS 2009, 231H, TfS 2009, 322 LSR, and SKM 2009.475 SR.
[8] E.g. TfS 1998, 606 H, where the Supreme Court found that a taxpayer was not resident in Denmark.
[9] *Aage Michelsen*: Internatonal skatteret, 3rd ed., 2003 p. 142; and LV 2009-2 D.A.1.1.1.
[10] The Tax Department's circular Dkd. Medd. 1972, p. 139, No 104 Skd.; and LV D.A.1.1.

which the taxpayer takes up residence in Denmark; see KSL § 8(1), TfS 1998, 795 LSR, and *Aage Michelsen* in R & R 2009/9 SM p. 228 f ('Ubegrænset skattepligt som følge af ophold eller bopæl i Danmark – Afvisning af at afgive bindende svar').

A.1.1.2.2. Specific topics arising from Community law/the Nordic tax treaty?

There do not appear to be any special questions arising in relation to the Nordic Tax Treaty or EU law.

A.1.1.3. Under which conditions does tax residency cease to exist – a brief description

A.1.1.3.1. Domestic law

As a rule, liability to Danish tax will end if residence in Denmark is given up. KSL § 1(1) No 1 does not provide how residence is to be defined. In practice, attention is paid to whether the person in question, by establishing a home, acquiring a residence or by other measures has indicated that they intend to take up residence in Denmark.[11] For more detail on the concept of residence, see above.

If a taxpayer owns a residence in Denmark or has tenant's rights to an apartment or house in Denmark, there is an administrative rule establishing a presumption that a 3 year irrevocable letting or subletting means that the taxpayer cannot be regarded as having maintained their residence in Denmark during these 3 years. This presumption can be rebutted if other circumstances argue for either accepting a shorter period of irrevocable letting or subletting or for not accepting the 3 year period as being sufficient to establish giving up residence.[12] There have been individual cases where a shorter period has been recognised, for example TfS 1991, 132 LSR, but in TfS 1992, 316 H the Supreme Court refused to recognise a shorter period than 3 years as being sufficient to establish that residence had been given up. This case involved a taxpayer who had lived abroad for 7 years, but used the residence in question when he was in Denmark.

Whether a taxpayer has had the intention to give up their residence must be decided on the basis of objective and provable facts. The question of evidence is important for deciding this.[13] There is a case, TfS 2001, 137 LSR, where a taxpayer moved from the residence he had had hitherto in connection with a stay in the USA. He moved temporarily to his parents' address, which continued to be available to him as a residence after he had travelled to the USA, and after his return he lived at his parents' address. The taxpayer was considered to have full tax liability in Denmark. In the case U 1982.708 Ø, a family travelled together to Brazil, but came back after 2 years, because of the risk to the children's health and marital problems. The Eastern High Court agreed with the ruling of the National Tax Tribunal, according to which there was sufficient evidence to show that the taxpayer had had the intention to take up long-term residence in Brazil, and that in leaving Denmark he had ceased to be resident in Denmark. In the case TfS 1986, 299

[11] LV D.A. 1.1.
[12] Lærebog om indkomstskat, 13th ed., p. 722.
[13] Lærebog om indkomstskat, 13th ed., p. 716.

Ø, a taxpayer had moved to Switzerland in order to take up a post with an international organisation based there. For the first 5 years the taxpayer's spouse remained in Denmark, for the sake of their children's schooling. The High Court found that the taxpayer had unquestionable taken up residence in Switzerland, where his job required his constant attendance. The residence in Denmark was retained was for special reasons of a temporary nature, and since the other elements of links to Denmark were considered of subordinate importance, the High Court found that the taxpayer had not remained resident in Denmark after the move to Switzerland.

There has been much debate as to whether a holiday home can constitute a residence in Denmark.[14] The cases show that as a rule having a holiday home in Denmark does not constitute residence in Denmark if the holiday home is only used for holidays and suchlike; see TfS 1990, 163 LSR, TfS 1990, 164 and TfS 1992, 424 LSR. It is a condition that there are no other significant links to Denmark, especially that the taxpayer does not undertake other professional activities during their stay; see TfS 1996, 51.[15]

A.1.1.3.2. Specific topics arising from Community law/ the Nordic tax treaty?

There do not appear to be any special questions arising in relation to the Nordic Tax Treaty or EU law.

A.1.2 Taxation

A.1.2.1 What are the general tax rates on employment income – a brief description

In the spring of 2009 the Danish Parliament carried out a tax reform that, among other things, makes changes to the taxation of earned income.[16] Among other things, the intention is to reduce the top marginal tax rate from 62.3 % in 2009 to 55.4 % in 2010. The changes made by the reform will primarily take place in 2010.

The income of natural persons is divided into 4 categories; personal income, capital income, share income and CFC (controlled foreign company) income. Earned income is taxed as personal income, after the deduction of labour market contributions. Earned income is taxed the same, regardless of whether it is paid to a person who is fully liable to tax under KSL § 1 or to a person who has limited tax liability under KSL § 2(1) No 1.

There are three State taxes which are imposed according to the amount of the earned income.

Bottom-bracket tax is at 5.04 % in 2009 and will be reduced by 1.5 % to 3.76 % in 2010. Bottom-bracket tax is calculated on the basis of personal income with the addition of positive capital income, according to the Law on personal tax (PSL) § 6. If a married person has negative capital income, this amount is set off against the other spouse's positive capital income prior to the calculation of bottom-bracket tax.

---

[14] *Aage Michelsen*: Internatonal skatteret, 3rd ed., 2003 p. 133; and Lærebog om indkomstskat, 13th ed., p.721.
[15] For more on this question, see Lærebog om indkomstskat, 13th ed., p. 721.
[16] The amendments to income tax were introduced in Law No 450 of 12 June 2009.

Middle-bracket tax is imposed on personal income which, with the addition of positive capital income, exceeds DKK 347,200 in 2009. The tax percentage is 6 %; see the Law on personal tax § 6a. If a married person has negative capital income, this amount is set off against the other spouse's positive capital income prior to the calculation of middle-bracket tax. If a married person's personal income, with the addition of positive capital income, is below the DKK 347,200 threshold, the other spouse's threshold is increased by the amount by which it falls short. Middle-bracket tax will be done away with as from 2010.

Top-bracket tax is paid at 15 % of personal income and positive capital income if income exceeds DKK 347,200 (figure for 2009); see the Law on personal tax § 7. For married persons, top-bracket tax is calculated on the personal income of each spouse, and on the couple's total positive net capital income. The tax is payable by the spouse that has positive capital income. If both spouses have positive capital income, the tax on the couple's total net positive capital income is divided between each spouse's capital income.

Top-bracket tax will be unchanged in 2010, but the threshold for payment of top-bracket tax will increase to DKK 389,900 in 2010 and to DKK 409,100 in 2011. This means that the threshold for the payment of top-bracket tax in 2010 will correspond to a gross monthly income of about DKK 37,000 before deduction of labour market contributions.

A health contribution of 8 % is also payable to the state; see the Law on personal tax § 8. The health contribution is calculated on the taxable income after deduction of the personal allowance.

Natural persons also pay tax to local government authorities and to the church. The amount of local government tax varies from authority to authority. Those with limited tax liability pay local government tax at the average local government rate, which in 2009 is 24 %. Church tax is only paid by members of the State church. The rate varies between local authorities, but in 2009 the average is 0.88 %.

The calculated taxes are reduced by the tax value of the personal allowance; see PSL § 10(1), (2) and (5). This applies both to persons with full tax liability, see KSL § 1, and persons with limited tax liability on earned income, see KSL § 2(1) No 1 and PSL § 10(5).

Persons who, according to KSL § 2(1) No 3 (hired-out labour), have limited tax liability pay a gross tax of 30 %; see KSL § 48 B.

As a rule, persons who have limited tax liability under KSL § 2(1) No 2 have a duty to make their own tax returns. Those who are liable to tax under KSL § 2(1) No 3 will be exempt from making a tax return if tax has been deducted at source.

A.1.2.2 Which rules apply specifically for workers migrating to your country?

The general rules on full and limited tax liability are reviewed above in section A.1.1.2.1. Here it should only be noted that the thresholds for obtaining deductions in calculating taxable income are for those with limited tax liability.

When calculating their income, a person who has limited tax liability under KSL § 2(1) No 1 should only include the income that is the basis for the tax liability. Correspondingly, deductions are only allowed for expenses associated with such income; see KSL § 2(3). This means that an employee with limited tax liability will be able to make deductions for usual employee expenses, see the Law on tax assessment (LL) § 9, which provides for deductions for the expenses of an employee connected with carrying out paid work if the expenses exceed DKK 5,500 (figure for 2009). The costs of membership of a trade union can also be deducted. On the other hand, a taxpayer with limited tax liability will not be able to deduct contributions to private pension schemes; see the Law on tax and pensions (PBL) § 18, but will be covered by a tax exemption in connection with employer's pensions schemes; see PBL § 19. Maintenance contributions to a former spouse, see the Law on tax assessment § 10, will also not be deductible for a person with limited tax liability. There was previously a debate about whether interest paid on debts secured against real property in Denmark could be deducted, even if the proceeds were not used for maintaining the property in question. Administrative practice has followed the rule that, for taxpayers with limited tax liability who own real property in Denmark, deductions from the calculation of assets can only be permitted for ordinary mortgage debts and for other debts secured against the owner's bonds on the property up to 80 % of the market value of the property at the end of the income year.[17]

Persons who have full tax liability can use their spouse's unused personal allowance when calculating tax; see PSL § 10(3). This rule does not apply to those with limited tax liability. The Law on personal tax does not give married taxpayers with limited tax liability a personal allowance for their spouse. To compensate for this, KSL § 9 F includes a provision whereby, when calculating their taxable income, persons who are married at the end of an income year and who are liable to tax under KSL § 1(1) No 1 may deduct DKK 42,900 (corresponding to the personal allowance). The deduction only applies to income under § 2(1) No 1, and cannot exceed the income. There is a condition linked to the deduction that the taxpayer should have the same residence as their spouse at the end of the income year and the spouse should not have a tax reduction by means of a personal allowance under PSL § 10. This applies regardless of whether the spouse has made use of their personal allowance. A deduction under KSL § 9 F is not covered by the restriction on deductions in the Law on tax assessment § 9(1), since the deduction is not regarded as concerning the expenses of an employee in connection with carrying out paid work. If the income period is for less than 1 year, the deduction is allowed at the rate of 1/12th per month.

Apart from these rules, there are special rules for natural persons who obtain earned income from Denmark but have not necessarily had full links with Denmark for a longer period.

---

[17] Lærebog om indkomstskat, 13th ed., p. 745 with reference to the practice.

Cross-border workers
The rules on cross-border workers are found in KSL section I A. The rules apply to persons with limited tax liability; see KSL § 5 A(1). The rules are applicable if, in an income year, at least 75 % of the total income, after deduction of expenses connected with carrying out paid work under State Tax Law § 6(1)(a), is earned in Denmark. If taxation is made under the rules for cross-border workers, in calculating the taxable income deductions may be made according to the general rules for fully liable taxpayers in respect of a number of expenses concerning the taxpayer's family and personal circumstances; see KSL § 5 B. This concerns, for example, interest payments of a private nature, contributions to pension schemes, charitable contributions and maintenance payments.

If a cross-border worker does not want to use the rules in KSL § 5A-5D, or if the person does not fulfil the conditions in these provisions, that person will instead have limited tax liability in Denmark according to the rules in KSL § 2(1) No 1; see KSL § 2(4).

According to administrative practice, foreigners who are assumed to be in Denmark for a shorter period can obtain a deduction from their taxable income for the increased living costs in connection with their stay in Denmark upon making a specific request, called a 'technical deduction'. This deduction is allowable for persons who have full tax liability as well as for those who have limited tax liability. The technical deduction is only allowed when it is assumed that the duration of the stay does not exceed 3 years and if, during the posting, the taxpayer continues to be paid by the foreign employer. If these conditions are fulfilled, an annual deduction of DKK 8,000 plus 5 % of the gross salary is allowed. The deduction may not exceed 25 % of the gross salary. This deduction can only be allowed for a period of 2 years from the start of the tax liability.[18]

Special tax regime
Special rules apply to highly-paid employees and researchers from abroad. The aim of the rules is to strengthen Denmark's international competitiveness and to promote research and product development of an international level in Danish undertakings and research institutions. The rules are in KSL § 48 E and § 48 F, and they apply to persons who have full tax liability under § 1 or limited tax liability under § 2(1) No 1. Such persons can choose to be taxed under § 48 F, when commencing employment with a Danish employer; see KSL § 48 E(1). As a rule there is a requirement for the employee to carry out their work in Denmark.

There are several conditions for the application of the rules, and in outline these are:

1. The person concerned may not have had full or limited tax liability under KSL § 1 within the preceding 3 years.
2. The person concerned may not, within 5 years prior to the appointment, have had direct or indirect participation in the management, control or significant influence over the undertaking in which they take up employment.
3. The person concerned may not be employed in the undertaking in which they take up employment during a period of 3 years prior to or 1 year after the termination of tax liability.

[18] LVD 2009B.3.1.

4. The person concerned may not previously have been sent abroad as a PhD student, paid for by public means from Denmark.
5. Payment under the contract of employment must constitute an average in the same calendar year of DKK 63,800 per month (2009 figure). This does not apply to employees of universities.

If the person concerned uses these rules, they must choose between paying:

1. Tax of 25 % of the payment in cash. On the other hand deductions may not be made from the payment. The costs of acquiring, insuring and maintaining payment cannot be deducted from other income of the taxpayer. The obligation to pay income tax on the payment is fulfilled by the payment of A tax and tax under the law on labour market contributions. The tax rate is thus effectively 31 %.
2. Tax of 33 % of the payment in cash. If tax is paid under the law on labour market contributions, the tax rate is thus effectively 38.36 %.

If the 25 % tax rate is chosen, this may be for a maximum of 36 months. If the 33 % tax rate is chosen, this may be for a maximum of 60 months.[19]

The Øresund Agreement

Upon completion of the Øresund bridge, Denmark and Sweden entered into a cooperation agreement aimed, among other things, at enabling increased cross-border integration. The cooperation resulted in two agreements: the Øresund Agreement,[20] which had the aim of harmonising tax rules; and the Framework Agreement, on social security. Among other things, the Øresund Agreement lays down which country has the right to tax salaries for work performed in both countries, as the right to tax the whole income is that of the employer's country, even if some of the work is carried out as home working or as business travel in the country of residence. The Agreement entered into force under Law No 974 of 5 December 2003.

Pensions

If a person has their own foreign pension scheme when moving to Denmark, in principle the pension scheme will be covered by the rules on taxable pension schemes; see section II A of the PBL. This means that contributions paid by the employer will be taxable as a part of the employee's salary and there will not be a deduction for the contributions which the employee makes themselves; see PBL § 53 A(2). On the other hand, pension payments paid out will not be taxable. The ongoing proceeds of the pension will be taxed as capital income; see PBL § 4(12) No 14.

From 1 January 2008, persons who, in connection with moving to Denmark, become fully liable to tax and are covered by pension schemes established by life assurance companies, pension funds or credit institutions in another Member State of the EU/EEA, can have the pension scheme approved as a tax-privileged pension scheme for a period of 60 months; see PBL § 15 D. This

[19] The Danish rules and similar rules from other countries were discussed at this year's IFA Congress in Vancouver at a seminar which was led by Professor Frederik Zimmer. The seminar was entitled: 'Special Measures for Temporary Residents'. Among other things, there was a discussion of whether such rules breach the State aid rules of Article 87 of the EC Treaty.

[20] The Agreement between the Kingdom of Denmark and the Kingdom of Sweden on certain tax matters. This entered into force under Law No 974 of 5 December 2003.

applies even if the scheme does not fulfil the Danish conditions for tax privileges. Several conditions are attached to this rule:

1. At the time of its establishment, the pension scheme must have qualified to reduce the person's taxable income.
2. The person must have participated in and contributed to the pension scheme for at least 1 year prior to moving to Denmark.
3. The person may not have been liable to tax under KSL § 1, § 2(1) Nos 1-4, 7 or 9-29, or (2), within 3 years prior to moving to Denmark.
4. The pension scheme must largely correspond to a scheme that fulfils the conditions in Chapter 1.
5. It must be possible to verify the person's documentation concerning the pension scheme. The rules also apply to cross-border workers; see PBL § 15 D(5). The consequence of approval is that there is an exemption from labour market contributions and a right to make a deduction for the employee's own contributions when calculating taxable income. Further, it is an advantage that the ongoing proceeds are not taxed, either when they are earned or when the pension is paid out. If the person has left Denmark at the time it is paid out, the payments will not be taxed in Denmark.[21]

The Nordic Tax Treaty does not contain rules on deductions for contributions to pension schemes. By an amendment to the protocol of the Nordic Tax Treaty, with effect from 1 January 2009 there has been an amendment to Article 18, so that the country of residence, for example Denmark, can tax pensions paid out, for example from Sweden, with a credit for Swedish tax of only 25 %; see Fredrik Lundgren, Skat Udland 2008/12, 429 ('Protokol om ændring af den nordiske dobbeltbeskatningsoverenskomst').

On the other hand, Article 2 of the Øresund Agreement contains rules on the mutual recognition of pension schemes with regard to cross-border workers and persons who move between the two countries; see Article 2. Cross-border workers can thus choose for themselves whether to contribute to a scheme in Denmark or Sweden. Each country must give cross-border workers a deduction for contributions to pension schemes in the other country when the employee is taxed on the net income. According to the Agreement, persons who move from one country to the other can continue to contribute, with a right to make a deduction, to an existing scheme in the country of residence hitherto. The calculation of taxable income also exempts the employer's contributions to the pension scheme.

A.1.2.3 Which rules apply to workers migration from your country?

A.1.2.3.1 Rules for the avoidance of double taxation

Denmark has entered into a number of tax treaties with other countries. If a source country surrenders the right to tax in accordance with a tax treaty, then there will not, as a rule, be a need for further relief. On the other hand, if it is the country of domicile that surrenders the right to tax under a tax treaty, the situation is different, as here the income should be included under the global income principle. It will thus be necessary to take further mitigating measures.[22] Under

[21] Lærebog om indkomstskat, 13th ed., p.1187 ff.
[22] *Aage Michelsen* in International Skatteret, p. 287.

Danish domestic law there will be relief for international double taxation under LL § 33 and § 33 A. Relief under LL § 33 uses the method of general (or maximal) credit, and relief under LL § 33 A uses the exemption with progression method.[23] There can also be relief under a tax treaty entered into by Denmark. The taxpayer can choose either to claim under domestic law or under the mitigation provisions in the tax treaty, depending on which measures give greater relief from double taxation.

LL § 33 A concerns specific relief for double taxation of earned income obtained abroad. The rule has been included in order to improve the scope for Danish undertakings to send employees abroad.[24] The rule is a domestic exemption with progression rule. This means that the employee not only has a deduction for the tax paid abroad, but also a deduction for the Danish tax, even if the foreign tax is less, or if the taxpayer is not liable to pay any tax abroad. The provision only applies to those with full tax liability; see KSL § 1.

There are some conditions attached to the application of the rule. The rule is only applicable if the taxpayer has stayed outside Denmark for at least 6 months without interruption, other than necessary work in Denmark that is directly related to the stay abroad, holiday or suchlike, with a total of duration of not more than 42 days. The rule applies to the earned income obtained through such foreign stay.

LL § 33 A(3) contains a rule dealing with the situation where a tax treaty gives Denmark the taxing right. For those who are privately employed, the total income tax is reduced by half the amount that is proportionately payable on the foreign income.

There is a rule in LL § 33 according to which income tax paid to foreign states and collected there can be deducted from Danish State and communal taxes; see LL § 33(1). LL § 33 does not apply to earned income covered by LL 33 A, see LL § 33(7).

There are two upper limits for what relief can be obtained under LL § 33. A deduction cannot be made for a greater amount than the tax that is in fact paid abroad. Moreover, the amount of a deduction cannot exceed that part of the total Danish tax that, according to the circumstances between the foreign taxed part of the income and the whole of the Danish taxed income, falls on the foreign income; see LL § 33(1).

The income that is entitled to relief is calculated according to the net principle, so that, for deductions that concern foreign income, all income categories shall be related to the foreign income in the calculation of the relief; see LL § 33 F. The provision is included in order to counteract tax arbitrage in the form of investments of borrowed capital in foreign financial investments and the interest on the loan is deducted from the Danish income statement, while before the provision was introduced the foreign capital income could be included in the calculation of relief for the gross amount.[25] The effect is that it is not possible to obtain relief for double taxation in this situation since, according to LL § 33(1), it is not possible to obtain greater relief than that part of the total Danish tax that, according to the circumstances between the

---

[23] *Aage Michelsen* in International Skatteret, p. 287.
[24] Lærebog om indkomstskat, 13th ed., p. 1050.
[25] Lærebog om indkomstskat, 13th ed., p. 1047.

foreign taxed part of the income and the whole of the Danish taxed income, falls on the foreign income. Since the interest payments on the loan are deducted from the foreign income, the Danish tax on the foreign income will be low or even nil. Thus there will be no relief.[26]

With effect from income year 2008, labour market contributions have been categorised as a tax, in line with other forms of income tax.[27] This means that relief can be given for labour market contributions under domestic rules and under tax treaties entered into with other states.

Under Law No 861 of 30 November 1999, the Danish Parliament adopted an amendment to the relief provisions in the Nordic Tax Treaty. In principle the Law contains a change from exemption with progression (crediting that part of the total Danish tax that is due on the foreign income) to credit (crediting that tax in fact paid) for persons who are not covered by social insurance in the country where they work. The aim of this was to put an end to the tax system's unintended favouring of those resident in Denmark and working in one of the other Nordic countries. The Law only concerns those who, under Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, did not pay social security contributions in the country where they worked because they were covered by social security in Denmark, and therefore paid less than other taxpayers both in Denmark and in the country where they worked. The difference was due to the fact the relief for foreign tax did not take account of the fact that social security payments were not made abroad.

A.1.2.3.2 Exit taxes

The principle in Danish tax law is that a person first pays a tax when a gain or a loss is realised. This principle is departed from in situations where a person moves abroad and owns assets that are relevant for taxation. The rules lead to tax being imposed when a person gives up being fully liable to Danish tax, regardless of whether a gain or a loss has been realised on the assets in question. These rules are thus closely connected to the rules on whether a taxpayer has full or limited tax liability in Denmark; see above. The rules on emigration are found in the different laws relating to different assets. These are the Act on Taxation of Capital Gains on Sale of Shares (ABL), Act on Taxation of Capital Gains, the Act on tax and pensions, and the Act on tax at source.

The rules in the ABL are in §§ 38-40. Broadly the rules state that if, when emigrating, a person no longer has full tax liability or becomes resident abroad for tax purposes as a result of a tax treaty, the shares that such person owns at the date of emigration are regarded as having been disposed of. The tax calculated is regarded as the final tax. It is possible to obtain a suspension of the payment of the tax; see ABL § 39. This requires that each year the taxpayer sends an overview of their shareholdings to SKAT (the central Danish tax administration). The balance of the suspended tax payment is regulated according to disposal, sale to the issuing company or other assignment, as well as decisions that can negatively affect the share values and the receipt of certain loans. The consequence of being granted a suspension of payment is that the tax first

[26] Lærebog om indkomstskat, 13th ed., p. 1047.
[27] Law No 1235 of 24 October 2007.

becomes due when there is an actual disposal of the shares. With every disposal of shares listed in the overview of shareholdings there will be a calculation of the gain or loss, and of the tax payable. If the tax on actual disposal exceeds the tax paid abroad, the amount of the surplus tax must be paid, and the balance of the suspended tax will be reduced by that amount.[28]

In the Act on Taxation on Capital Gains tax (KGL) there are corresponding rules for how gains and losses on assets and liabilities should be dealt with in an emigration situation. The rules are in KGL § 37, and these mean that gains and losses that have not yet been realised are nevertheless liable to tax upon a person's emigration. It is possible to be granted a suspension of payment of the tax, see KSL § 73 E, provided that gains and losses at the date of emigration are calculated as if the assets or liabilities were realised; see KGL § 37(4).[29]

The Law on tax and pensions § 19 a-19 E contains rules whereby a person who ceases to have full tax liability by moving abroad[30] will be subject to additional tax on certain pensions to which the employer has made extraordinary contributions. Pension schemes that are covered by the rules on additional tax are schemes with regular payments and premium capital pensions. The additional taxation will be levied by looking at the pension agreement the taxpayer has had with their employer for 5 years prior to the year in which the tax liability is terminated. If the pension agreement has been increased in this 5 year period, the taxable income will be increased in accordance with this change to the pension agreement. The taxable income is only increased to the extent that the pension contributions exceed 20 per cent of the total salary paid by the employer in question. In principle, these rules do not apply to private pension schemes or to contributions to capital pensions etc. made by the employer.

The Law on tax at source § 10 contains a more general rule on taxation in connection with emigration when a taxpayer ceases to be fully liable to tax in Denmark and has assets entitled to depreciation allowances which are not subject to taxation in Denmark following the emigration. Since the focus of this national report is on employees, these rules are not discussed further here. As for real property situated in Denmark, the termination of full tax liability will not trigger taxation on emigration, see KSL § 1, as instead there will be limited tax liability, see KSL § 2, and there will be a right for Denmark to tax under tax treaties.[31]

A.1.3 Deviations between the rules applicable between the Nordic countries and the rules applicable versus other countries.

A protocol of 4 April 2008, which was implemented in Denmark by Law No 1193 of 11 November 2008, amended the provision in Article 13(7) of the Nordic Tax Treaty on several points. Among other things, it is laid down that the country of origin can only tax capital gains that have accrued before the date of emigration, so that the right to impose tax on Capital Gains on Sale of Shares is shared between the country of origin and the destination country.[32] There are

[28] For more on these rules see Lærebog om indkomstskat, 13th ed., p.747 f.
[29] For more on these rules, see LV 2009 A.D.2.19.
[30] Or if full tax liability is replaced by limited tax liability in Denmark, or becomes resident abroad for tax purposes as a result of a tax treaty.
[31] LV.D.A.1.1.2.9.
[32] *Fredrik Lundgren* in Skat Udland 2008, 429 p. 897 f.

corresponding provisions in several other tax treaties which Denmark has entered into; see for example Article 13(6) in the treaties with Estonia, Latvia, Lithuania, Italy, South Africa and Ukraine.[33]

A.3. Social security contributions

A.3.1. Liability to pay

A.3.1.1. Under which conditions is there a liability to pay for employment exercised by migrant workers

A.3.1.1.1. Domestic law

Employees who have earned income from work carried out in Denmark and who have full or limited tax liability according to KSL § 1, § 2(1) No 1 or 3 (hired-out labour) must pay labour market contributions, regardless of whether their employer is Danish or foreign. This applies whether or not the foreign employer has a permanent establishment in Denmark.

For employees who work abroad for a foreign employer, there is only an obligation to make a contribution if they have full tax liability in Denmark, see KSL § 1, and are covered by social security legislation in Denmark; see the Law on labour market contributions § 7(3) or (4), and § 7(1)(a).

A.3.2. Contributions paid

A.3.2.1. What are the general social security contribution rates – a brief description

Denmark has relatively low social security contributions and relatively high income tax. Employees pay 8 % in labour market contributions. Labour market contributions are calculated on the gross earned income, including certain personal benefits, for example the value of a company car. Labour market contributions are also paid on contributions to pension schemes administered by the employer. Labour market contributions are withheld in the same way as withheld A tax and are deducted from personal income.

Labour market contributions were changed as from 1 January 2008 so that, in relation to tax treaties and the rules on relief, such contributions are treated as a tax.[34] In spite of this, Denmark still allows relief under Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community and other social security agreements.

Employees and employers pay to the employee's labour market supplementary pension scheme (ATP). Employees pay a fixed annual amount of DKK 1,080 per full-time employee.

[33] *Aage Michelsen*, national report to the IFA Congress in 2002 in Oslo, Cahiers de droit fiscal international, Volume LXXXVIIb, 2002 ('The tax treatment of transfer of residence by individuals') p. 224 f.
[34] Law No 1235 of 24 October 2007.

The employer pays 2/3 and the employee pays 1/3 of the contribution; see the Law on the ATP § 15(4). Employers who are covered by the Law on the ATP also pay contributions to the Employers' Reimbursement System (AER). Private employers also pay to finance the Employees' Guarantee Fund. The employer's contribution is DKK 2,160 per full-time employee.

A.3.2.2. Do any rules apply specifically for immigrant workers?

The rules on the obligation to pay labour market contributions are modified by some exemptions in the Law on labour market contributions § 7(3) and (4), where there is a reference to Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community and other social security agreements and to other social security agreements between Denmark and other countries. The main rule in Regulation (EEC) No 1408/71 is that persons who are covered by the arrangement will be covered by the social security law in the Member State where they work, even if they are resident in another Member State; see Article 13. As a result of this, employees are not required to make a contribution in Denmark if they work in a country that is not covered by the arrangement. In certain situations employees who are covered by social security in Denmark can be allowed to remain under the social security while working abroad.

In 1999 the Nordic Tax Treaty was amended so that relief from double taxation was made dependent on social security status.

The Framework Agreement between Denmark and Sweden is a declaration made by the two countries about the administration of Article 17 of Regulation (EEC) No 1408/71 in connection with social security and work in the Øresund region.[35] If an employee is resident in Sweden and works in Denmark, Regulation (EEC) No 1408/71 will mean that the employee is covered by the social security of the country where they work; i.e.; Denmark. If the employee works in both Denmark and Sweden, they will be covered by the social security in Sweden, which means that the Danish employer must pay the Swedish employers' contributions and that the employee must pay the Swedish employees' contributions.

In the Framework Agreement it is laid down that an employer and an employee can agree that if more than half the work in a 3 month period is carried out in Denmark and the rest in Sweden, the employee can be covered by the Danish social security; see paragraph 4a of the Agreement. The employer thereby avoids paying the Swedish employer's contribution for social security. The employee must instead pay the labour market contribution and the employer must pay the labour market supplementary pension scheme (ATP). If work is occasionally carried out in a third country, the employee does not lose their right to be covered by Danish social security. There are no requirements as to the form of agreement, other than that it must to be entered into between employer and employee, and it must be clear that the employee understands that they are responsible for fulfilling the obligations for the payment of contributions for which the employer is normally responsible.

---

[35] The joint Danish-Swedish declaration on the administration of Article 17 of Regulation (EEC) No 1408/71 in certain cross-border cases (distance working etc.).

KSL § 48 B(2) allows employees in Denmark to make deductions for the obligatory foreign (employers') social security contributions when an agreement has been made that the employee is to fulfil these obligations. The provision not only applies in relation to Sweden, but to all EU/EEA Member States where the problem arises. For hired-out workers who are covered by gross taxation of 30 %, obligatory foreign contributions are deducted from the basis for the calculation of the 30 % tax.

In the converse situation, where an employee is resident in Denmark but works in both Denmark and Sweden, corresponding problems arise, so that the Swedish employee is covered by social security in Denmark and the Swedish employer must then be registered for the payment to the labour market supplementary pension scheme etc. in Denmark. Here too, the Framework Agreement means that, under the same conditions as stated above, it can be agreed that the employee is to be covered by Swedish social security.

A.3.3. Deviations between the rules applicable between the Nordic countries and the rules applicable versus other countries

Labour market contributions were previously regarded as not being covered by tax treaties between Denmark and other countries. Instead, the obligation to make contributions abroad was defined by Regulation (EEC) No 1408/71 and the specific social security agreements between Denmark and other countries.

There will be an exemption from the obligation to make a contribution under the Law on the labour market fund if a person is covered by social security in an EU Member State; see the Law on the labour market fund § 7(3).

Under Law No 1235 of 24 October 2007, as from income year 2008 the labour market contribution is treated as an income tax, in line with other income taxes. Prior to 2008, the labour market contribution (as a social security contribution) could be claimed from persons who were covered by social security in Denmark, whether or not Denmark had a right to tax the income under a tax treaty. This is not the case as from income year 2008. As from income year 2008 the labour market contribution is treated as a tax and therefore can only be claimed when a tax treaty allows. Another consequence is that the labour market contribution is included as a tax when calculating relief from double taxation.

Under Law No 471 of 12 June 2009 (L 196), with effect from income year 2011 the Law on labour market contributions is again amended, as the basis for the contribution is extended to other earned income that is today exempted from the labour market contribution. Following this amendment to the law, labour market contributions must be paid in respect of both Danish and foreign earned income, regardless of whether the taxpayer is covered by social security in Denmark or abroad. In this way the labour market contribution is treated as an income tax.