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# Denmark

## International Estate Planning Guide Individual Tax and Private Client Committee

### Contact:

Tove H Dahl  
td@t-dahl.dk

Alexandra Castenschiold Paaske  
*Cordes & Castenschiold, Copenhagen*  
ap@cclaw.dk

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## **Authors' note**

This introduction to Danish estate planning is intended as a guide to fundamental principles of law. The focus is on general rules and concepts rather than details and exceptions. Our ambition was to make basic elements of Danish estate planning law accessible to colleagues abroad in order to facilitate professional discussions on estate planning issues involving Danish interests.

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Tove H Dahl

Alexandra Castenschiold Paaske

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## I. Wills and disability planning documents

### A. Will formalities and enforceability of foreign wills

#### 1. DANISH WILLS

The Inheritance Act (*arveloven*) defines the types of will that are valid and the requirements for their execution and revocation. The testator must be of age (18 years) or married and have mental capacity (be of sound mind).

A will is made (and revoked) in writing and signed by the testator before either a notary public (*notartestamente*) or two witnesses (*vidnetestamente*). Signature before a notary public is the preferred procedure. A copy of the will is stored in a central register to which the Probate Court has access in order to ascertain whether the decedent left a will. If the original cannot be found, the copy serves as the true will of the decedent. The notary's attestation of the will is considered proof of the testator's mental capacity.

#### 2. FOREIGN WILLS

Denmark has ratified the Hague Convention on Testamentary Dispositions. Foreign wills made in accordance with the convention are recognised as valid with respect to formalities. The enforceability of the provisions of a foreign will may depend on the testator's country of domicile (see IV.A as to the determination of domicile according to Danish law).

- a. The testator was domiciled in Denmark at the time of his or her death

The testator's estate will be subject to Danish probate. Distribution will be made according to the Danish Inheritance Act, and general principles of Danish inheritance law will govern the interpretation of the will. However, interpretation principles of the testator's country of domicile when he or she made the will may be taken into consideration in order to determine the true intentions of the testator. Danish rules on forced heirship (see II.B) will prevail, and some provisions of the will may have to be modified, for example, with regard to trust arrangements (see III.C).

- b. The testator was domiciled abroad at the time of his or her death, but left assets in Denmark

If probate in another country comprises the testator's worldwide estate, his or her assets in Denmark will not be subject to Danish probate, and the provisions of his or her will cannot be contested (but may have to be modified, see below as to real estate acquisition by foreigners).

If the testator left assets in Denmark that are not subject to probate in any other country, Danish probate can be established (see II.A). For the distribution of such assets, the Danish Inheritance Act does not apply, and Danish rules on, for example, forced heirship, will not prevail.

Denmark has no special rules for inheritance of real estate property, but some restrictions apply to the acquisition by foreigners. If the decedent had legal title to Danish real estate property, his or her heirs would normally fulfil the requirements for acquiring title, provided that they are natural persons. For trust arrangements comprising real estate in Denmark, see III.C.

### B. Will substitutes (revocable trusts or entities)

In Denmark, estate planning for incapacity (physical and/or mental) is still in its early stages. Devices such as revocable trusts or similar entities are not used in providing for the management of property during incapacity.

### C. Powers of attorney, directives and similar disability documents

Danish law has no statutory rules for powers of attorney, directives or similar instruments providing for future disability/incapacity. According to the Contracts Act (*aftaleloven*) a power of attorney becomes void when the principal is declared legally incompetent by order of the court. But if guardianship proceedings are not initiated, a power of attorney granted when the principal was fully competent will remain effective during incapacity.

The Council of Europe uses the term 'continuing powers of attorney', which covers two types of power of attorney used in Denmark:

- A lasting power of attorney (*vedvarende fuldmagt*) becomes effective when it is signed, and it remains effective, even if the grantor becomes incapacitated, for example, because of physical injury or mental illness. A lasting power of attorney is acknowledged both in theory and case law.
- A power of attorney for the future (*fremtidsfuldmagt*) becomes effective when the grantor becomes incapacitated, for example, due to mental illness. The attorney-in-fact is obligated to ensure that the power of attorney becomes effective and, as such, is obliged to make sure that the conditions stipulated for effectiveness are met. Powers of attorney for the future were implemented into Danish legislation in September 2017 and there are now specific formal requirements for the drafting of such powers of attorney, and provisions for their registration and as to how they become effective. The power of attorney is put into effect by application to the Agency of Family Law (*Famileretshuset*) including documentation of the grantor's current state of mental health. The Agency of Family Law will then decide if the requirements are met for giving effect to the power of attorney. If so, the power of attorney will be officially registered (*tinglyst*).

Both types may be used as an alternative to guardianship and may regulate financial and/or personal issues. Powers of attorney (both types) issued before September 2017 are still valid.

There is an ongoing discussion regarding the need for issuing statutory rules for lasting powers of attorney and, in particular, whether there is a need for form requirements, regulation concerning administration and information, and choice of attorney(s)-in-fact.

## II. Estate administration

### A. Overview of administration procedures

Estate administration is supervised by the Probate Court (*skifteret*) and governed by the Administration of Estates Act (*dødsboskifteloven*).

The Probate Court is notified of all deaths and the court decides upon the administration procedure. The administration can be either private (*privat skifte*) or by executor (*bobestyrerskifte*). The heirs are usually free to choose between these administration forms, whether or not the decedent left a will. However, private administration will normally not be an option if the decedent appointed a named person as executor in his or her will. As to the undivided estate (*uskiftet bo*), see II.C.

A certificate of administration (*skifteretsattest*) is issued by the Probate Court specifying the administration form. The certificate serves as evidence of authority over the estate for the heirs (private administration), executor (administration by executor) or surviving spouse (undivided estate).

The decedent's estate has legal personality; assets are held in the name of the estate (not the executor, representative or any of the heirs), and the estate is a separate taxable entity. The estate's 'life' as a separate legal entity begins on the date of decease and ends as at the effective date of closing the estate (*skæringsdag*).

An inventory as of the date of death (opening balance sheet, *åbnings status*) is prepared in the early stages of the estate administration. The inventory is filed with the Probate Court and the tax authorities. Final accounts for the estate period (*boopgørelse*) include a statement of income, expenditure and settlement of debts, an inventory as of the effective date of closing the estate, inheritance tax calculation and a statement to show the distribution among the heirs. The final accounts with the tax return for the estate are filed with the Probate Court and the tax authorities for audit.

### 1. PRIVATE ADMINISTRATION (*PRIVAT SKIFTE*)

A basic condition for private administration is that all the heirs agree to this administration procedure and that they continue to agree on all matters concerning the administration and distribution of the estate. If at any time before closing the estate the heirs cannot agree on issues related to administration or distribution, then the private administration must end, and the Probate Court will appoint an executor.

The heirs must appoint a representative, either from among themselves or any other person (usually a lawyer). The representative is authorised to receive notices from the Probate Court, the tax authorities and the estate creditors on behalf of all the heirs. The representative has no legal authority over the estate, which is bound only by the joint signature of all the heirs.

The effective date of closing the estate is chosen by the heirs, but cannot be later than the first anniversary of the death. Within three months of the effective date, the heirs must file with the Probate Court and the tax authorities the final accounts (*boopgørelse*) and a tax return for the estate.

### 2. ADMINISTRATION BY EXECUTOR (*BOBESTYRERSKIFTE*)

Administration by executor is granted by the Probate Court if the decedent left a will appointing an executor or if any condition for private administration cannot be fulfilled. The estate is managed by the executor, who is the only person authorised to bind the estate by his or her signature. The executor must seek the opinion of the heirs in all material issues relating to the administration of the estate. The voting rights of the heirs are determined according to their share in the estate.

The effective date of closing the estate is determined by the executor (after consulting with the heirs) and must not be later than the second anniversary of the death. The final accounts (*boopgørelse*), together with the estate's tax return, must be presented to the heirs within two months and then filed with the Probate Court and the tax authorities.

### 3. PROBATE FOR NON-RESIDENTS (*HENVISNINGSSKIFTE*)

If the decedent was not domiciled or resident in Denmark at the time of his or her death, the decedent's estate will not be subject to Danish probate, even if he or she left assets in Denmark. However, Danish probate may be granted if the decedent: (1) was a Danish citizen or had a special connection to Denmark and left assets which are not subject to probate abroad; or (2) left assets in Denmark not subject to probate abroad (whether or not the decedent had any other connection to Denmark).

In these instances, Danish probate will require an application to a Probate Court, either in the district where real estate property is situated or the Probate Court of Copenhagen. Danish probate will be limited to assets that are not subject to probate abroad.

## *B. Intestate succession and forced heirship*

### 1. SUCCESSORS

Successors to the intestate property are the surviving spouse and the blood relatives. The relatives are classified in three classes according to the priority in which they take inheritance.

#### a. Spouse

The surviving spouse takes half of the estate if there are heirs in class 1. If there are no heirs in class 1, the spouse takes all.

#### b. Blood relatives

##### *i. Class 1*

The heirs in class 1 are the intestate's descendants. The estate (or that part which is not taken by the surviving spouse) is divided equally between the children. A predeceased child's share goes to his or her descendants (*per stirpes* distribution).

##### *ii. Class 2*

If there is no surviving spouse or heirs in class 1, the estate is distributed among the heirs in class 2, being the intestate's parents and their descendants, half to each parent and distribution *per stirpes* in the case of a predeceased heir.

##### *iii. Class 3*

The heirs in class 3 are the intestate's grandparents and their children (no further descendants, that is, only the intestate's uncles and aunts, but not his or her cousins). Each grandparent takes one-quarter. The share of a predeceased grandparent is divided between his or her children.

### 2. FORCED HEIRSHIP

There is forced heirship for the surviving spouse and the heirs in class 1. The forced share is one-quarter of the intestate share. By the will, the forced share of children can be reduced to DKK 1m (approximately €135,000); a predeceased child's DKK 1m forced share is divided equally between his or her children. Lifetime gifts are not considered when calculating the forced share, unless the gift was made as an advancement (*arveforskud*). The presumption is that lifetime gifts are not intended to be an advancement.



### C. Marital property

The statutory Danish marital property regime is that of community property (*formuefællesskab/delingsformue*). Separate property (*særeje*) can be created either by marital agreement (before or during marriage) or by third-party conditions imposed on a gift or inheritance.

#### 1. COMMUNITY PROPERTY (*FORMUEFÆLLESSKAB/DELINGSFORMUE*)

The community property regime applies to all assets of the spouses, whether acquired before or during marriage, as inheritance or by gift. However, a testator/donor may impose a separate property clause on inheritance/gifts.

In the community property regime, each spouse has full ownership rights to his or her assets and is liable only for his or her debts. The true sense of 'community' becomes apparent only when marriage ends – by divorce or death – where the net asset value of each spouse's community property is divided equally. The net asset value of each spouse's community property is calculated. If the net asset value is positive for both spouses, equal division in value is obtained by compensation in cash or by transfer of assets from one spouse to the other. If one spouse is insolvent (negative net asset value) the other spouse must still contribute half the net asset value of his or her community property, but will not be required to take on any of the other spouse's debts.

As a consequence of these rules, the estate of a decedent spouse will comprise the entire community property of both spouses. However, the surviving spouse will still be entitled to manage his or her own community property assets during the 'life' of the estate (see II.A), and only half the value of the total community property is subject to distribution among the heirs of the decedent.

##### a. Undivided estate (*uskiftet bo*)

At the death of one spouse in a community property regime, the surviving spouse is entitled to defer distribution to the decedent spouse's descendants – undivided estate (*uskiftet bo*) – if the decedent spouse left only children (or further issue) of the marriage with the surviving spouse. The surviving spouse has full ownership rights to all the assets of the undivided estate and becomes personally liable for the debts of the decedent spouse. The undivided estate is established by a simple procedure; a request to the Probate Court and the filing of an inventory within six months.

#### 2. SEPARATE PROPERTY (*SÆREJE*)

The Act on the Financial Relationship between Spouses (*lov om ægtefællers økonomiske forhold*) provides for several forms of separate property, the most commonly used being absolute separate property (*fuldstændigt særeje*), divorce separate property (*skilsmisssæreje*) and a combination of divorce and absolute separate property (*kombinationssæreje*).

With a few exceptions, there are no significant differences between a separate property and a community property regime during marriage. When a separate property regime marriage ends by divorce, one spouse is not entitled to any share in the other spouse's separate property. When the marriage ends by death, the surviving spouse is entitled to his or her forced inheritance share of the decedent spouse's separate property.

##### a. Absolute separate property (*fuldstændigt særeje*)

Absolute separate property (*fuldstændigt særeje*) is held separately both in the case of divorce and when marriage ends by death.

b. Divorce separate property (*skilsmissesæreje*)

Divorce separate property (*skilsmissesæreje*) is treated as absolute separate property if marriage ends by divorce. Where marriage ends by death, divorce separate property is treated as community property. This means that the surviving spouse may be entitled to undivided estate (*uskiftet bo*).

c. Combination separate property (*kombinations særeje*)

The most commonly used combination separate property (*kombinations særeje*) regime provides for divorce separate property while both spouses are living; at the death of one spouse, his or her property is treated as community property, whereas the surviving spouse's property becomes absolute separate property. The legal consequences at the death of the first spouse are that:

- the surviving spouse's property is not included in the estate of the decedent spouse and cannot be used to pay off the creditors of the decedent; and
- the surviving spouse retains the right to undivided estate, but such undivided estate will comprise only the decedent's property.

### 3. MARITAL AGREEMENT (*ÆGTEPAGT*)

A marital agreement providing for separate property can be made at any time before or during marriage. In order to be valid – in relation to third parties and between the spouses themselves – the agreement must be officially registered (*tinglyst*), but no other formal requirements, such as witnesses or signature before a notary public, apply.

#### *D. Tenancies, survivorship accounts and payable on death accounts*

The most commonly used non-probate assets are life insurance contracts, lifetime gifts and separate property marital agreements. Joint tenancies and so on, as instruments to avoid probate, are not generally recognised in Danish law. If a Danish contract for jointly owned property has a 'right of survivorship' clause, such a provision will not make the decedent's share non-probate, and the right of the surviving co-owner to take the decedent's share must be confirmed in the form of a will (unless the co-owner is a statutory heir).

In a High Court case (U.2008.2690Ø), the decedent and his cohabitee had established joint ownership to shares in a Cayman Island corporation. Survivorship rights for the surviving cohabitee were recognised, with the effect that no portion of the shares (or the value thereof) was included in the estate.

## **III. Trusts, foundations and other planning structures**

### *A. Common techniques*

#### 1. FOUNDATIONS

A Danish foundation (*fond*) is a separate entity with full legal personality. The foundation has absolute ownership rights in its assets and is managed by an independent board of directors. If the foundation is set up through a lifetime gift, the

settlor must irrevocably give up his or her ownership rights and control of the property transferred to the foundation. The settlor, his or her spouse and members of the settlor's family cannot form the majority of the board of directors, and the assets of the foundation can never revert to the settlor.

Setting up a foundation used to be a common instrument to protect wealth for the benefit of future generations. However, foundations for the benefit of the settlor's spouse, descendants and other relatives are now quite heavily taxed and usually not an attractive option.

## 2. TRUSTS

The common law trust is not a generally recognised legal concept in Danish Law, and Denmark has not ratified the Hague Trust Convention of 1 July 1985. It is possible under Danish Law to make an arrangement where one person ('trustee') has legal title of property that is held and managed for the benefit of another ('beneficiary'). However, there is no set of rules governing basic trust elements, such as the duties and powers of the trustee, the fiduciary relationship between the trustee and beneficiary, modification or termination of the trust arrangement, discharge and appointment of trustees, or breach of trust.

## 3. OTHER INSTRUMENTS

Other instruments are available in estate planning to achieve goals, such as to conserve and control property through successive generations, protect the property from the creditors of the beneficiaries and secure professional management of the property.

The instruments listed below can be used in lifetime gifts. If decided by will, some restrictions apply for the forced inheritance share. In order to achieve the intentions of the testator it may, therefore, be necessary to obtain a renunciation of inheritance (*arveafkald*). The instruments can be combined or accumulated. Obviously, tax considerations (eg, valuation for gift and inheritance tax purposes, and deferral of capital gains tax) carry much weight in the design of individual arrangements.

### a. Renunciation of inheritance (*arveafkald*)

Any person of full age and mental capacity may renounce his or her forced share or his or her full inheritance by agreement with the testator. It is not necessary that renunciation of inheritance be given for consideration. Unless the heir reserves the inheritance rights of his or her descendants, the renunciation will be binding on them as well.

### b. Settlement of property (*båndlæggelse*)

The Danish concept of *båndlæggelse* provides extensive protection. The beneficiary has legal title to the property, but cannot dispose of it by *inter vivos* transactions. The property is not available to the beneficiary's creditors. Unless the will or gift deed contains provisions to the contrary, income from the settled property will be at the beneficiary's free disposal (and available to his creditors); he will also be free to dispose of the property *mortis causa*.

Settled property in the form of capital investments must be deposited with the 'trust department' (*forvaltningsafdeling*) of a bank authorised to hold settled capital, but can be held and managed by other persons or institutions if so directed in the will or gift

deed. Settlement of real estate property is secured through registration in the land register (*tinglysning*).

c. Income benefit rights (*rentenydelsesret*)

Property can be transferred to person A on condition that income derived from such property is paid to another person B – for life or for a specified period. This instrument can be used where the donor/testator wishes to provide maintenance for B and secure the property for A's heirs.

d. Tenancy rights, pre-emptive rights and purchase options (*boligrettigheder, forkøbsrettigheder, køberet*)

Many heritage and other agricultural estates are retained in the family by passing from one generation to the next, usually through the eldest son. To secure the chain, the gift deed/will imposes *mortis causa* directions or restrictions. Provisions for other family members often include rights of tenancy. In some cases, restrictions on *inter vivos* transactions are imposed, such as pre-emptive rights and (conditional) purchase options for other family members.

e. Chain of succession (*successionsrækkefølge*)

*Mortis causa* dispositions can be restricted or eliminated by establishing a chain of consecutive successors to property; at the death of the first heir/donee in the chain (or another event specified in the will or gift deed) the property passes to the next and so on. The succession provisions are valid until the death of a successor who was unborn at the time of transfer to the first successor in the chain. In combination with provisions for *båndlæggelse*, full protection against *inter vivos* transactions and creditors will be obtained.

f. Marital separate property clauses (*særejeklausuler*)

By the will or gift deed, property can be classified as marital separate property in order to exclude such property from marital community property, see II.C for the legal effects of separate property compared with community property.

g. Administration arrangements (*administrationsordninger*)

A gift deed or will may dictate expert management of property for a donee/heir either as consultants or with specific powers and authority. An ongoing discussion is to what extent administration directions in a gift deed or will are valid for minors and legally incompetent adults.

h. Voting right differentiation (*stemmeretsdifferentiering*)

Estate planning may include measures to differentiate voting rights where interests in a business or other assets are owned by a limited liability company. This strategy can be combined with preferential dividends rights, the result being that, for example, the successful entrepreneur can pass wealth to his or descendants while retaining controlling interest in the business.

*B. Fiduciary duties (trustees, board members, directors etc)*

Statutory provisions govern the duties of guardians of minors (and legally incompetent adults), executors of estates, board members of foundations and limited liability companies, as well as bank 'trust departments' (see III.A). For other fiduciary positions, similar or identical standards of conduct apply on a non-statutory basis.

### *C. Treatment of foreign trusts and foundations*

Questions arise on recognition of foreign trust and foundations, for example:

- i. The decedent during his or her lifetime placed assets in a foreign trust or foundation: will such assets be included in the decedent's estate (ie, be subject to probate, forced heirship, inheritance and estate tax)?
- ii. The decedent left a will providing for the transfer of assets in the form of inheritance to a foreign trust or foundation: how will Danish inheritance tax be calculated, and can the provisions of the will be fully executed (eg, with regard to real estate property situated in Denmark)?
- iii. Danish individuals receive distributions from foreign trusts and foundations: how will such distributions be treated for Danish tax purposes?

#### 1. FOREIGN FOUNDATIONS

If a foreign foundation fulfils the basic requirements for recognition of a Danish foundation (see III.A), it will be fully recognised as a foundation. In general, the three sets of questions will be resolved as follows:

- i. The assets placed in the foundation during the decedent's lifetime will not be included in his estate, that is, the assets are non-probate and will not be subject to inheritance tax or taken into consideration when calculating forced shares.
- ii. Assets can be passed as inheritance from the estate to the foreign foundation. However, Danish real estate property could normally not be transferred to a foreign foundation; in such a case, the property will have to be sold and the proceeds contributed to the foundation. Danish inheritance tax will normally be calculated at the full rate (36.25 per cent) even if the foreign foundation serves only charitable purposes.
- iii. Distributions from a foreign foundation will be treated for tax purposes as distributions from a Danish foundation, that is, as ordinary taxable income.

#### 2. FOREIGN TRUSTS

Denmark has not ratified the Hague Trust Convention and does not recognise trusts as a separate legal entity. The treatment of foreign trusts depends on an analysis of the trust documents and available information on the operations of the trust. The three sets of questions may be resolved as follows:

- i. The legal concept of a trust is different from that of a foundation. Even so, lifetime transfers to a foreign trust may be treated and recognised in the same way as transfers to a foundation. However, since July 2015, the general rule is that contributions made to a foreign trust by a person domiciled in Denmark for tax purposes are considered as made to the taxpayer him or herself. The same applies to contributions made within two years of the taxpayer becoming domiciled in Denmark for tax purposes. The trust is considered as transparent for tax purposes, as well as for the purposes of probate, inheritance tax and forced heirship.

- ii. Inheritance from the decedent's estate can be placed in a foreign trust but, since July 2015, the estate will be taxed on income from the assets contributed to the trust. For inheritance tax purposes, the inheritance will normally be deemed to have passed to the beneficiaries of the trust depending on an analysis of the will provisions and the trust documents.

Legal title to Danish real estate property can normally not be registered in the name of a foreign trustee. If the will provides for transfer of a Danish real estate property to a foreign trust, an arrangement will have to be made similar to *båndlæggelse* of the property; title is registered in the name of the beneficiaries (or those of the beneficiaries who fulfil the requirements for acquisition of the real estate property in Denmark) combined with registration of documents conferring certain rights and powers on the trustee (eg, the property cannot be sold or mortgaged without the consent of the trustee). Proceeds from the sale, lease or mortgage of the real estate property must be handled on a contractual basis.

- iii. Distribution of *income* from trust assets will be treated as ordinary taxable income. The tax treatment of distributions of trust *capital* will depend on the trust documents. Where a trust for the benefit of the settlor's descendants is dissolved according to the trust provisions, the distribution will be considered as inheritance from the original settlor and not subject to Danish inheritance tax if the settlor was domiciled abroad at his or her death. However, if an intermediate beneficiary was entitled to dispose of the capital *mortis causa*, the capital would normally be considered as an inheritance from such intermediate beneficiary, even if he or she did not exercise his or her rights.<sup>1</sup>

## IV. Taxation

### A. Domicile and residency

Although this section is headed 'taxation', it may be useful to include some general remarks on the Danish concept of domicile.

#### 1. CONFLICT OF LAWS DOMICILE (*DOMICIL*)

The concept of domicile (*domicil*) determines the personal law applicable to an individual (eg, whether the Danish Inheritance Act applies). 'Domicile' is defined as the state where an individual has his or her (habitual) residence with the intention to remain for an indefinite period of time. An individual can have only one domicile. If an individual has residences in more than one state, his or her domicile is in the state to which – everything considered – the individual has the closest connection. Change of domicile requires a change of permanent residence, as well as an intention to remain in the new state permanently or for an indefinite period of time. When determining the intention, many factors – subjective as well as factual – are taken into account.

#### 2. JURISDICTIONAL DOMICILE (*HJEMTING*)

Domicile for jurisdictional purposes is less demanding than conflict of laws domicile. According to the Administration of Justice Act (*retsplejeloven*), an individual is domiciled for jurisdictional purposes in the local district of Denmark where he or she has his or her (habitual) residence (*bopæl*). If an individual has residences in more than one district, he or she is domiciled for jurisdictional purposes in each of such districts. If an individual has no residence, then his or her *hjemting* is in the local district where the individual is currently staying. In other words, an individual may have

given up his or her Danish domicile for conflicts of law purposes while retaining his or her domicile for jurisdictional purposes in Denmark.

The estate of a decedent who was domiciled in Denmark for jurisdictional purposes at his or her death is subject to Danish probate, even if the decedent was domiciled abroad and his or her personal law is that of another state. A gift is subject to Danish gift tax if either the donor or donee had jurisdictional domicile in Denmark at the time when the gift was made.

### 3. DOMICILE FOR TAX PURPOSES

An individual is subject to Danish tax on his or her worldwide income if the individual has his or her permanent home (*bopæl*) in Denmark or when the individual's stay in Denmark exceeds six months. In all material respects, the Danish concept of domicile for tax purposes complies with the definition of 'residency' in the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and Capital. Case law on exit from Danish domicile for tax purposes is extensive, as such individuals often retain some connection to Denmark. The concept of 'resident, non-domiciled' has no legal implications in Danish tax law; a resident is subject to full taxation on his or her worldwide income, whether or not domiciled in Denmark for conflict of laws purposes.

#### *B. Gift, estate and inheritance taxes*

##### 1. GIFTS

The recipient of a gift is subject to taxation: either gift tax (*gaveafgift*) or income tax.

Advancement of inheritance is considered as a taxable gift; the same applies to consideration paid for renunciation of inheritance. If a gift asset is subject to capital gains tax, the donor will be taxed as well, unless conditions for deferral of capital gains tax are fulfilled. Gifts between spouses are tax free, and capital gains tax (if any) is always deferred. Gift tax (*gaveafgift*) applies to gifts between ascendants and descendants. The gift tax rate is 15 per cent. There is no generation-skipping surtax. Income tax is levied on all other gifts, for example, gifts between siblings, distant relatives and unrelated parties.

The value of a gift for tax purposes is assessed at market value. However, the tax authorities have issued guidelines for the valuation of certain assets, such as real estate property and unquoted shares, and these guidelines can normally be relied on, even if they result in a value less than market value. In the ongoing process of estate planning, the valuation guidelines may be decisive in determining whether to accelerate succession by lifetime gifts.

Gift tax is payable if either the donor or donee was domiciled in Denmark for jurisdictional purposes when the gift was made. For gifts outside the gift tax regime (ie, between siblings etc – see above), Danish income tax is payable if the donee was domiciled in Denmark for income tax purposes when the gift was made.

##### 2. INHERITANCE

Inheritance tax (*boafgift*) is payable where the estate is subject to probate in Denmark. Inheritance tax is levied on the estate, but calculated with regard to the family relationship between the decedent and heirs.

No inheritance tax is payable on that part of the estate that devolves to the surviving spouse. For inheritance to descendants (and parents, but no further ascendants), the inheritance tax rate is 15 per cent. For inheritance to other heirs, the inheritance tax rate is 36.25 per cent. Charities may obtain exemption from inheritance tax by application to the tax authorities. There is no generation-skipping surtax if an heir renounces his or her inheritance for the benefit of his or her descendants. Valuation of the estate assets for inheritance tax is made according to the same rules as those applying to valuation for gift tax purposes.

For estates left by non-domiciled decedents, inheritance tax is payable only on real estate property in Denmark, on assets connected to a permanent establishment in Denmark, and on any assets referred to Danish probate (see II.A). No Danish inheritance tax is payable on any other inheritance from non-domiciled decedents, even if the heir is domiciled in Denmark.

### 3. ESTATE TAX (*BOSKAT*)

The estate is a separate legal entity subject to taxation on income (including capital gains) from the estate assets. In all material respects the taxable income of the estate is calculated and deductions for tax purposes allowed as for the decedent when he or she was alive.

Income from the estate assets is taxed at a flat rate of 50 per cent (except for share income (*aktieindkomst*), which is taxed at 42 per cent). For practical purposes, the estate tax rate applies to all income of the decedent and his or her estate from 1 January in the year of decease until the effective date of closing the estate. The choice of effective date of closing the estate will always involve tax considerations. Once the estate accounts and tax return have been filed, the effective date is final. It is possible to choose the date of decease as the closing date if the accounts and tax return are filed within nine months of the date of decease.

Distribution of estate assets subject to capital gains tax is considered as a taxable sale. Valuation is made according to the same rules as those applying for gift and inheritance tax purposes. The heirs may enter into the decedent's tax position for capital gains tax purposes if certain conditions are met. Capital gains tax will then be deferred and an allowance for part of the deferred tax (*passivpost*) is deducted from the value of the assets for inheritance tax purposes.

#### C. Taxes on income and capital

##### 1. INCOME TAX

A living person is subject to either full or limited tax liability. Full tax liability on worldwide income applies to persons domiciled in Denmark for tax purposes – see IV.A. Persons not domiciled in Denmark for tax purposes will be taxed on Danish-source income only. Denmark has entered into conventions for the avoidance of double taxation with a large number of countries.

Tax on personal income (*personlig indkomst*) is progressive. The maximum tax rate is 52.06 per cent (2021). An additional eight per cent labour market contribution (*arbejdsmarkedsbidrag*) is payable on wages and earnings from personally owned business. Capital income (*kapitalindkomst*) (eg, interest from bank deposits, bonds etc, and capital gains on bonds, financial instruments and certain real estate property) is taxed at a maximum rate of 42 per cent (2021). Share income (*aktieindkomst*) is taxed separately, and comprises capital gains from quoted and unquoted shares, as well as



dividends. The rate is 42 per cent (2021).

## 2. CAPITAL GAINS TAX DEFERRAL

Capital gains tax is payable on transfer – by sale, gift or inheritance – of shares in limited liability companies, personally owned businesses and certain kinds of real estate property. The family relationship between the transferor and transferee will allow for deferral of capital gains tax. At present (2021), family relationships include the transferor's children and grandchildren, his or her siblings, nieces and nephews, and their children (grandnieces and grandnephews). Included is also the transferor's cohabitant for more than two years. For transfer to a spouse, capital gains tax deferral is mandatory. Exceptions and restrictions apply for certain assets, for example, shares in 'money bin' companies.

If the transferee is not domiciled in Denmark for tax purposes, capital gains tax deferral is allowed only for assets that will make the transferee subject to limited tax liability in Denmark.

## 3. CAPITAL TAX

There is no tax on capital/wealth in Denmark.

### **Note**

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<sup>1</sup> The Superior Court case (U2012.908H) illustrates the detailed scrutiny of trust provisions and foreign trust law in determining the Danish tax position. The trust was created by the will of the UK domiciled A for the life benefit of: (1) his spouse; and (2) his daughter B (both domiciled in the United Kingdom). At B's death the trust capital would pass to her children; however, B had the power to pass the trust capital – by will or codicil – to any of her children or further issue. B's descendants were her daughter C, domiciled in Denmark, and C's children. C received an advancement (under the UK Trustee Act 1925, section 32) of trust capital. The advancement was considered as a gift from B to C, subject to Danish gift tax, that is, not as inheritance from C's UK-domiciled grandfather (which would have been tax free).