**Introductory Explanation**

The following only concerns Danish income tax; it does not take into account value added tax or other duties as this would go beyond the scope of this report.

The exchange rate used is: EUR 1 is equivalent to DKK 7.50.

1. **Taxpayer and Third Party Duties**

1.1. **Tax Assessment Procedures**

Pursuant to Section 1(1) of the Tax Control Act (Skattekontrolloven), all taxpayers in Denmark are *in principle* required to submit an annual self-assessment of their income. There is no general obligation for taxpayers to submit information about their assets, but under special provisions on capital gains tax and value tax on property (*ejendomsværdiskat*) taxpayers must submit information on some assets, e.g. shares, bonds and property. Furthermore there is an obligation to submit information on taxable deficits and losses that are to be carried forward. If information about losses is not submitted, the taxpayer will not be able to carry them forward.

Most of the information relating to individuals is submitted to the tax authorities by third parties (such as employers and banks) so individuals need only control that the information given is correct; see the Tax Control Act, Section 1(4). Undertakings, both companies and self-employed persons, have to submit tax returns but they only have to send in their accounts if requested; see the Tax Control Act, Section 3.

An annual income tax return is generated on the basis of the tax assessment submitted by a taxpayer.

1.2 **General Duties within Tax Assessment Procedures**

Only a few individuals and companies are not obliged to submit a tax assessment; see Section 2 of the Tax Control Act. These are typically companies and individuals without income, e.g. children under the age of 15.
Pursuant to Sections 7-7L, 8-8Å and 9-10 of the Tax Control Act, third parties have to disclose a considerable amount of information to the tax authorities. This is typically information about salaries, interest payments and other regular payments. With the information provided by third parties, the tax authorities have nearly all the information needed for the income tax returns of individuals other than self-employed persons, and the authorities automatically generate tax returns on the basis of this information. This means that individuals do not have to submit tax returns in practice, but only have to control that the information in their automatically generated income tax return is correct. Taxpayers are not always entitled to change the information given by a third party; see the Tax Control Act, Section 1 A.

Companies and self-employed persons must submit their information themselves. They must also retain their accounts and documentation in case the tax authorities request it.

Section 3 B of the Tax Control Act is the Danish provision governing transfer pricing documentation on controlled transactions. Pursuant to this provision, in its tax assessment a company is required to give information about the nature and extent of the commercial and economic transactions between its controlled companies. Furthermore they must prepare and keep transfer pricing documentation relating to the determination of prices and terms. They need only give this documentation to the tax authorities if requested. The tax authorities can request a declaration from an auditor as to whether the documentation complies with the requirements on transfer pricing documentation.

Under exemptions in Section 3 B(6) of the Tax Control Act, small companies are only required to prepare and keep transfer pricing documentation if the controlled transactions are carried out with individuals, companies or permanent establishments resident in states outside the EU/EEA or in states with which Denmark has not entered into a double tax convention. In reality this exemption means that many Danish companies do not have to prepare and keep transfer pricing documentation.

Individuals have to submit their tax returns by 1 July in the year following the income year. If an individual has received an automatically generated income tax return, the deadline for controlling that the information is correct is 1 May in the year following the income year. Companies have to submit their tax returns six months after the end of the income year.

1.3. Duties regarding Clarification, Examination and Supervision Procedures
The tax authorities may examine tax returns within deadlines laid down in Sections 26 and 27 of the Tax Administration Act (Skatteforvaltningsloven).

Surcharges and Penalties in Tax Law
Pursuant to Section 26 of the Tax Administration Act, the normal deadline for both taxpayers and the tax authorities to re-examine a tax assessment is 1 May in the fourth year after the end of the income year in question. The final assessment must be made by 1 August in the same year.

For controlled transactions, according to Section 3 B of the Tax Control Act the deadline is extended to 1 May in the sixth year after the income year; see Section 26(5) of the Tax Administration Act (Skatteforvaltningsloven). The deadline is extended in these situations because such transactions often involve complicated structures and foreign transactions, making it difficult to obtain information. The wording of the provision is very broad, and according to case law the six-year deadline seems to include all transactions between a controlled company and its owner, even though the transaction may not be complicated and even if the case concerns a company and its owner in their role as employee, e.g. relating to the taxation of fringe benefits.

Section 27 of the Tax Administration Act provides for an exceptional deadline, and lists eight situations where the ordinary deadline is set aside. The most important exception is where a taxpayer or someone acting on their behalf intentionally or by gross negligence causes the tax authorities to make an incorrect assessment or an assessment on an incomplete basis. In these situations the deadline is effectively unlimited, but the tax authorities must give notice to the taxpayer of a changed assessment within six months of obtaining knowledge giving rise to the change. The final assessment must be sent within three months of giving notice.

The tax authorities may examine tax assessments in different ways. Where there is a difference between the information given by a third party and information in a self-assessment, this will prompt an examination by the tax authorities. Each year the tax authorities adopt a tax audit plan of the subjects to be controlled that year.

Controls by the tax authorities can include requesting a company’s accounts. Failure to disclose the accounts will be sanctioned; see section 2.2. If requested, companies must also disclose all accounts and documents to the tax authorities, including documentation about foreign activities; see the Tax Control Act Section 6(1). This obligation includes documentation from third parties, e.g. banks.

Pursuant to Section 6(4) of the Tax Control Act, the tax authorities may examine a company’s documents on its premises without a court order, if necessary for a tax audit. Access to the company’s premises includes access to private property that is part of the company’s business. This includes access to private homes, if a private home is used by a taxpayer for their undertaking, e.g. the home of a self-employed taxpayer. The tax authorities can request assistance from the police.
Section 6 of the Tax Control Act gives the tax authorities wide powers to obtain information, but these powers are limited by the prohibition of self-incrimination. The scope of their powers is difficult to define, but the tax authorities must refrain from requiring a taxpayer to give information if there is any suspicion that they have committed a crime. In such cases the tax authorities must hand over the case to the police.

1.4 Duties regarding Tax Collection

Individuals pay tax on the basis of their estimated annual income. There is a tax-at-source system. Taxes on salaries etc. are withheld when salaries are paid; see the Tax at Source Act (Kildeskatteloven), Section 40ff. Employers must withhold taxes, including labour market contributions, when paying salaries and wages; see the Tax at Source Act, Sections 46 and 49 A.

Annual income tax returns reflect whether the taxes withheld cover the taxes due. If there is a deficit the taxpayer must pay it by a given deadline. Pursuant to Section 69 of the Tax at Source Act, an employer is liable to pay taxes due to the tax authorities from an employee if the employer has failed to fulfil the obligation to withhold taxes. In practice this provision has been used in cases of hiring-out labour.

Income on which taxes are withheld on disbursement is called ‘A-income’; see the Tax at Source Act, Section 41(2). Other income, apart from royalties and dividends, is called ‘B-income’. Provisional tax also has to be paid on B-income on the basis of the estimated annual income. Such taxes are paid by the taxpayer in ten instalments per year.

Companies also pay provisional tax; see the Corporation Tax Act (Selskabsskatteloven), Section 29 A(1). The provisional tax is calculated as 50 % of average corporation tax for the previous three years. This tax is paid in two equal instalments on 1 March and 1 November. The companies are allowed to pay additional provisional tax.

Different requirements apply to companies subject to joint taxation (either as voluntary international or mandatory national joint taxation) pursuant to Section 31 of the Corporation Tax Act concerning the calculation of joint income and tax. As a general rule each company subject to the joint taxation must make up its own income statement. Thereafter a deficit from one company can be set off against a surplus from another company. A parent company is responsible for filing the annual tax assessment for its corporate group as well as the other tax obligations of the group.

Hitherto companies’ deficits have not been registered digitally. In 2014 a new and much-debated provision was included in Section 35 of the Corporation Tax Act. According to this provision all company deficits since income year 2002 must be digitally reported to the tax authorities. This digital reporting requirement applies even if there has been a corporate reconstruction since

Surcharges and Penalties in Tax Law
In the event of a corporate reconstruction the allocation of the deficits to the different companies must be decided.

1.5 Duties regarding Tax Shelter or Tax Schemes

In Denmark there are no general provisions on tax shelters or tax schemes as they are covered by the general requirements for documentation.

Pursuant to Section 10 F of the Tax Control Act, a promoter of a tax scheme must document the reality of the tax scheme as well as the assets and liabilities that are part of the tax scheme. If the tax authorities overrule a scheme the promoter and the taxpayers are liable for any taxes that are due as a result of the overruling of the scheme.

Moonlighting is sanctioned in Section 13 C of the Tax Control Act. According to this provision a person who buys goods or services on favourable conditions thereby indicating that the supplier will evade taxes on payment for the goods or services is punishable by a fine or imprisonment.

1.6 Other Duties

In order to ensure tax compliance, individuals have to submit information on their acquisitions of certain shares and bonds in their tax assessments. This is a mandatory prerequisite for the right to deduct losses on these shares and bonds. The information must be given in the tax assessment for the year of acquisition; see Section 15 of the Tax on Capital Gains on Bonds and Securities Act (Kursgevinstloven) and Section 14 of the Capital Gains on Shares Act (Aktieavancebeskatningsloven). Without these provisions a taxpayer might only take into account losses on the subsequent sale of such assets, and fail to record gains. At the time of the acquisition, a subsequent loss or gain cannot be predicted.

Another rule to prevent tax evasion by individuals concerns conditions for deducting alimony paid to an ex-wife and children. In order to obtain a deduction the taxpayer must give information about the identity of the receiver; see the Tax Control Act, Section 7 L, and the Tax Assessment Act (Ligningsloven), Sections 10 and 11.

There is another provision on moonlighting in Section 10 A of the Tax Collection Act (Opkrævningsloven). According to this provision, a taxpayer who pays more than DKK 10,000 in cash for goods or services has joint and several liability for the taxes, excise duties and VAT to which the payment might give rise. The idea is to ensure that payments are made electronically, thus making it possible to trace them.
2. Definition and Categorisation of different Types of Surcharges

In Denmark a criminal penalty is defined as:

‘A sanction is a legal response which involves an offender suffering personally or financially; it is imposed on a person who is culpable for an unlawful action in such a way that the intensity of the sanction is related to the seriousness of the unlawful action.’

The response of the law is either imprisonment or a fine pursuant to Section 31 of the Criminal Code (Straffeloven).

As can be seen, the definition of a criminal penalty is quite broad and it reflects the pragmatic Danish approach – if the sanction is either imprisonment or a fine reflecting some culpability, the sanction is to be regarded as a criminal penalty.

This pragmatic approach is also adopted in Danish tax law. In a Danish context whether a sanction constitutes a criminal or an administrative penalty is not discussed. Danish tax law applies other criteria for categorizing penalties – these are penalties for tax evasion and penalties for failure to comply tax regulations. In both cases imprisonment and fines can be imposed.

2.1 Criminal penalties

In Denmark penalties for non-compliance with tax law are found both in the Criminal Code and in special provisions in tax law. Pursuant to Section 31 of the Criminal Code, a criminal penalty is either imprisonment or a fine. These sanctions are also widely used in Danish tax law.

As a rule, in criminal law only intentional breaches of the law are treated as crimes. In Danish tax law both intentional and grossly negligent acts can be regarded as criminal. Even simple neglect is also regarded as criminal in respect of some failures to comply with tax regulations.

As the penalties differ depending on whether an offence is intentional or negligent, it is important to know what constitutes ‘intention’ and what constitutes ‘negligence’.

A breach of an obligation is intentional when a taxpayer is aware that their acts contravene a concrete provision; it is their intention to contravene the provision. There is negligence when a taxpayer fails to have sufficient regard for what is required in the circumstances.

In some cases only gross negligence is regarded as criminal, so it is important to distinguish it from simple negligence. There is a fine line between gross and simple negligence. Guidance to the distinction between them can be found in case law.

1 Vagn Greve, Strafferetten, Ed. 2, p. 13
2.2 Administrative penalties
As mentioned above, most penalties are regarded as criminal so that only a few penalties constitute administrative penalties. In Denmark there is no clear definition of administrative penalties, but the words used to describe them may help. Though similar to fines, these sanctions are described as *administrative charges* constituting penalties within the field of administrative law.

Based on this ‘definition’, some sanctions in Danish tax law can be characterized as administrative penalties.

Late submission of tax assessments
Pursuant to Section 5(1)(1) and (1)(2) of the Tax Control Act, late submission can be sanctioned by: a tax charge on the late submission of the tax assessment, a daily penalty to force the taxpayer to submit their tax return, and finally the tax authorities may estimate the tax assessment and thus the amount of tax due.

These sanctions are regarded as administrative penalties as they are imposed for the mere failure to submit a tax assessment and their only purpose is to force taxpayers to submit their tax assessments. These sanctions are cumulative, so that if a taxpayer does not submit their tax assessment after being confronted with a tax charge they will be charged daily penalties and so forth.

It may be argued that this is a breach of the *ne bis in idem* principle, as the taxpayer may suffer several penalties for the same breach with the purpose of forcing them to submit their tax assessment. It should also be mentioned that a tax payer has an obligation to give notice if their estimated tax assessment is too low. Failure to do so is regarded as tax evasion and can be sanctioned by imprisonment or a fine pursuant to Section 16 of the Tax Control Act. Thus the estimated tax assessment is used as an administrative penalty which gives rise to another obligation which is sanctioned by a criminal penalty. Thus in effect the failure to submit a tax assessment can be sanctioned in four different ways.

Additional tax
Pursuant to Section 21(1) of the Tax Control Act, an additional tax will be imposed if the limitation period of criminal liability has lapsed. In this situation an additional tax is imposed which is equivalent to the amount of the evaded tax.
2.3 Interests
In the context of this report, the imposition of an interest charge is not regarded as a sanction if it merely absorbs possible liquidity benefits. Few provisions on interest charges are regarded as sanctions in Danish tax law. These are to be found in Section 61 of the Tax at Source Act and Section 29 B of the Corporation Tax Act. In both cases an annual income tax return which results in a requirement for a balancing payment will also lead to the payment of interest in the form of an additional percentage which is added to the balancing payment. The addition is calculated as a certain percentage of the amount due. The actual percentage reflects the market interest rate and is calculated once a year pursuant to Section 7(2)(3) of the Tax Collection Act. As the additional percentage is calculated without regard to the period for which the taxpayer has had the excess amount available to them, it does not fulfil the definition of an interest charge in Danish tax law and is thus to be regarded as a surcharge.

It can be argued that interest charges on late payment of taxes can be regarded as surcharges when the level of the interest and the fact that they are not deductible is taken into consideration.

2.4 Other Surcharges
There are some indirect and hidden sanctions in Danish tax law.

**Non-deductibility of costs incurred:**
Pursuant to Section 8 Y of the Tax Assessment Act, for a cost to be deductible it must have been paid via a financial institution, making it possible to identify the payee. Costs for which payment is made in cash are not deductible if the payment exceeds DKK 10,000.

**Joint and several liability for outstanding taxes:**
Individuals who buy goods or services from an undertaker for a cash payment in excess of DKK 10,000 have joint and several liability with the vendor for the taxes to which the payment gives rise; see Section 10 A of Tax Collection Act, referred to in section 1.6 above.

**Obligation to keep a register:**
Pursuant to Section 86 A of the Tax at Source Act, the Danish tax authorities can require an employer to keep a register of employees. The aim is to combat moonlighting by requiring the daily registration of all employees. Otherwise employees doing moonlighting will just explain that they are having their first day at work. This obligation can be imposed by the tax authorities if an employer does not have sufficient registration of their employees, for example by employment contracts or the registration of wages paid.

**Auditors’ statements on transfer pricing documentation:**

Surcharges and Penalties in Tax Law
Pursuant to Section 3 B(8) of the Tax Control Act, the Danish tax authorities can require an auditor’s statement on an undertaking’s transfer pricing documentation. It must generally be both appropriate and relevant for the tax authorities to ask for such a statement, and the undertaking must have had controlled transactions with a legal or natural person resident in a country outside of EU/EEA or in a state with which Denmark has not entered into a double tax convention. If this is not the case, it will still be possible to ask for an auditor’s statement if a company has realized operating losses during the last four successive years.

Requirement for a statement of income for tax purposes:
Pursuant to Section 3 of the Tax Control Act an undertaking must make up an income statement which fulfils the requirements of the Tax Control Act. The income statement must be disclosed to the tax authorities upon request. If the income statement significantly fails to fulfil the requirements, the Danish tax authorities may ask an external auditor to draw up the income statement; see Section 3 D of the Tax Control Act.

Denial or deprivation of registration:
Pursuant to Section 11 of the Tax Collection Act, an undertaking can be asked to give security for its obligations to pay taxes and duties if it is doubtful whether the undertaking can fulfil such obligations. This can apply both to existing undertakings and new undertakings. If the security is not given the undertaking will lose its registration (existing undertaking) or its right to registration (new undertaking).

3. Catalogue of Attributes of different Surcharges
In the following the characteristics of the penalties and surcharges used in Denmark will be further examined, with reference to the attributes mentioned in the questionnaire.

3.1 Criminal penalties
As mentioned in section 2, criminal penalties in Denmark consist of either imprisonment or fines.

Imprisonment
Imprisonment is the most severe sanction in Danish tax law and is only used when an offence is committed intentionally. Imprisonment can be imposed both under criminal law and under special provisions in tax law.

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2 See Section 11 of the Tax Collection Act where these provisions are laid down in detail.

Surcharges and Penalties in Tax Law
The general provision on tax evasion is found in Section 289 of the Criminal Code. It applies in cases of especially serious breaches of tax law\(^3\) that are intended to obtain an unjustified advantage for the taxpayer or others. The breach must be both intentional and especially serious. The severity of the breach is assessed according to the amount of evaded tax. In practice a breach is considered severe if the evaded tax exceeds DKK 500,000. This amount of evaded tax does not relate to a single income year but can be accumulated over several income years. Imprisonment can be for up to eight years.

Imprisonment is also widely used as penalty in Danish tax law. The fundamental prerequisite is that the offence must be intentional. However, imprisonment is not imposed merely on the ground that the offence is intentional, as the amount of evaded tax is also taken into account. According to the case law, the amount of evaded tax must exceed DKK 250,000. If these two criteria are met, imprisonment will be imposed for up to 18 months.

Both in criminal law and in tax law any sentence of imprisonment must be imposed by a court.

**Fines**

Both in criminal law and in tax law fines can be imposed for tax evasion. In criminal law *additional fines* can be imposed whereas in tax law *normal fines* are imposed. Fines can be imposed for both intentional and grossly negligent offences.

In criminal law fines can be imposed pursuant to Section 50 of the Criminal Code. Such a fine is regarded as *additional* to other sanctions. A fine is imposed if, by their offence, a tax payer has obtained or intended to obtain a financial advantage for themselves or others. Additional fines are widely used in practice, but only in cases in which the sanction of imprisonment would be imposed pursuant to either criminal law or tax law. Thus an offence can be sanctioned by both imprisonment and by an additional fine. The amount of the additional fine will be equivalent to the amount of evaded tax.

Additional fines must be imposed by a court.

Fines are widely used for both intentional and grossly negligent breaches of Danish tax law. The amount of a fine is based on various factors depending on the kind of breach. Such breaches of the law can be one of two kinds. A breach of the law may amount to tax evasion if its purpose is to avoid paying taxes. Alternatively there can be a failure to comply with tax regulations such as the obligation to disclose information to the tax authorities or to withhold and pay withholding taxes etc.

\(^3\) Especially serious breaches of VAT law and excise duty law are also punishable under this provision.
In the case of an *intentional* breach of the law, the amount of evaded tax is decisive for whether imprisonment or a fine will be imposed. If the amount of evaded tax is less than DKK 250,000, a *normal fine* will be imposed. This fine will be equivalent to twice the amount of evaded tax exceeding DKK 60,000. For tax evasion below DKK 60,000 the fine is equivalent to the evaded tax.

*Grossly negligent* breaches of the tax law are subject to a *normal fine* equal to the evaded tax exceeding DKK 60,000. If the amount is less than DKK 60,000 the fine is half the amount of the evaded tax.

Pursuant to Sections 13, 15 and 16 of the Tax Control Act, taxpayers who are guilty of tax evasion can be subject to both imprisonment and a fine. Section 13 concerns a taxpayer’s active tax evasion by the disclosure of incorrect or misleading information for the purpose of evading tax. Sections 15 and 16 concern a taxpayer’s passive tax evasion. Such conduct is punishable by a fine according to the standards described above. If the evaded tax exceeds DKK 250,000 the conduct will be punishable by imprisonment.

Section 75 of the Tax at Source Act also provides for the imposition of fines if an employee fails to react when receiving gross salary, i.e. where taxes have not been withheld as required by Section 46 of the Act.

While the fines laid down in the Tax Control Act and Tax at Source Act are criminal penalties, the tax authorities have the power to impose them if the taxpayer admits their guilt and agrees to pay the fine by a certain time limit. There are examples of this in Section 20 of the Tax Control Act and Section 79 of the Tax at Source Act.

It is important to emphasize that the fines laid down in tax law are criminal penalties, so it is for the court to lay down the principles for their calculation. The tax authorities must comply with these principles when imposing fines. If a taxpayer does not admit their guilt and accept their fine the case will be brought before a court, and thereby the courts exercise a continuous control over the level of fines. The level of the fines and the length of imprisonment mentioned above is a result of case law.

**Fines relating to transfer pricing documentation**

In Danish tax law, fines relating to transfer pricing have recently been significantly increased by Act No 591 of 18 June 2012. The intention is that fines should reflect the advantage obtained by not complying with the requirement for transfer pricing documentation.

Surcharges and Penalties in Tax Law
Section 14(4) of the Tax Control Act concerns the intentional or grossly negligent breach of a company’s obligation to inform that the company must provide transfer pricing documentation. The fine is calculated on the basis of either the number of employees or the revenue and is the higher of the following:

1. 0.5% of the revenue up to DKK 500 million, 0.1% of the revenue from DKK 500 million to DKK 1 billion, and 0.05% of the revenue exceeding DKK 1 billion.
2. DKK 250,000 for up to 50 employees, increasing by DKK 250,000 for every 50 employees up to 500 employees. For companies with more than 500 employees the fine is DKK 2 million.

Section 17(3) concerns the failure to provide the required transfer pricing documentation or to provide an auditor’s statement pursuant to Section 3 B(8) of the Tax Control Act. The fine should reflect the advantage achieved, i.e. the savings made by not producing satisfactory transfer pricing documentation. The amount of the fine should also deter the non-presentation of correct transfer pricing documentation. The basic amount of a fine is DKK 250,000 plus 10% of the increased revenue to which the correct documentation on transfer pricing transactions might give rise. If correct transfer pricing documentation is subsequently produced the basic fine is lowered to DKK 125,000.

The fine will be imposed in respect of each income year for which the requirement to produce transfer pricing documentation is not fulfilled. If there is a continuing failure to fulfil the obligation the fine can be increased by 50%.

The level of fines relating to transfer pricing referred to above are those proposed by the Danish Parliament in Bill No 173 2011/12. The role of parliament is to give detailed guidelines on the level of fines, but it is for the courts to make the final decision. So far no case on this has been brought before a court.

3.2 Administrative penalties
If a taxpayer does not submit their self-assessment on time, they are required to pay a tax charge of DKK 200 for each day of delay up to a total of maximum of DKK 5,000 (about EUR 650); see Section 5 of the Tax Control Act. There are some exemptions pursuant to Section 5 of the Tax Control Act. In some circumstances the tax authorities can exempt a taxpayer from the tax charge.

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4 Pursuant to Section 3 B(6), smaller companies are not obliged to give information on controlled transactions. Whether a company is to be regarded as small is based on the number of employees in conjunction with either the balance sum or the revenue.
A daily penalty can be imposed for the late submission of the self-assessment in case a taxpayer continues to fail to submit their self-assessment. The amount of the daily penalty is a minimum of DKK 1,000 and is based on an individual evaluation.

The additional tax pursuant to Section 21(1) of the Tax Control Act is equivalent to the amount of the evaded tax.

### 3.3 Interests

As mentioned in section 2, interest in the form of a tax charge is only applied as a penalty in relation to a balancing payment. The amount of the charge reflects the market interest rate and is calculated in accordance with Regulation (EC) No 63/2002 of 20 December 2001 plus 0.8 per cent. For 2014 the tax charge is 5.0 percent.

### 3.4 Other surcharges

Other surcharges are described in section 2.4. They consist of various measures to persuade taxpayers to act in a certain way.

### 4. Surcharges regarding Third Parties

The Tax Control Act contains the main provisions on the obligations of third parties to disclose information to the tax authorities. There are several such obligations and they are some of the most important provisions supporting the tax assessment procedure. One important obligation is the requirement for employers to withhold taxes on wages and salaries laid down in Section 46 of the Tax at Source Act. Pursuant to Section 14(1) of the Tax Control Act, failure to comply with such obligations is sanctioned in the same way as a breach of Section 13, i.e. by imprisonment or a fine. The duration and amount of these penalties are equivalent to the sanctions referred to in sections 3.2 and 3.3.

Section 14 of the Tax Control Act also applies other ways of deciding the amount of fines. Pursuant to Section 14(2) and (3) of the Act a third party is required to disclose information on fringe benefits and other information. An intentional or grossly negligent failure to do so will incur a fine calculated on the basis of the number of employees. The fine is graded as follows.

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<thead>
<tr>
<th>Number of employees</th>
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<tr>
<td>1-4</td>
<td>DKK 5,000</td>
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<td>5-19</td>
<td>DKK 10,000</td>
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<td>20-49</td>
<td>DKK 20,000</td>
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<td>50-99</td>
<td>DKK 40,000</td>
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<td>100 +</td>
<td>DKK 80,000</td>
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Surcharges and Penalties in Tax Law
The fine can be imposed for each failure to comply. Thus if information must be disclosed once a month, failure to do so for two months will be regarded as two breaches and thus two fines can be imposed. The level of these fines will be decided by the courts. However, the courts have not yet ruled on this as the basis for the calculation of fines is relatively new.  

Section 74 of the Tax at Source Act provides for a sanction for the failure to withhold taxes pursuant to Section 46 of the Act. The sanction consists of a fine for an intentional or grossly negligent breach. If the breach is made with intention of evading taxes or if there are other aggravating circumstances, the sanction can be imprisonment. The penalties follow the pattern described in section 3, i.e. imprisonment or a fine depending on the seriousness of the breach and the amount of evaded tax.

Other penalties relating to the failure of third parties to fulfil their obligations do not require the breach to be either intentional or grossly negligent. The mere failure to comply is punishable. The sanction is still regarded as a criminal penalty in Danish law as the sanction will either be a fine or, in serious cases, imprisonment.

An employer who fails to keep a register, as referred to in Section 86 A of the Tax at Source Act, may be sanctioned pursuant to Section 74 A of the Act. As such registers are a tool for combatting moonlighting the sanction is calculated on basis of the unemployment benefit of the year in question. In the event of a continuing breach the fine will be increased by 25%.

Some new obligations have recently been introduced in Danish tax law. The company name and company registration number must be displayed on company cars.  Building craftsmen must put up a sign with the company name at construction sites, and people who perform professional work on private premises must identify themselves. All these obligations are for the purpose of securing information to combat moonlighting. Failure to comply with these requirements is subject to a fine. The amount of such fines depends on the number of breaches of an obligation. The obligation to put up a sign at a construction site is sanctioned by a fine of DKK 5,000, increasing in stages to a maximum of DKK 22,500 for a fourth breach. The same applies for a failure to display the company name on a company car, whereas failure to provide legitimation is only sanctioned by DKK 1,000 increasing to DKK 3,750 for a fourth breach.

These offences are new and the amounts of fines mentioned above are those suggested by the Danish Parliament. The level of fines is still to be decided by the courts before the tax authorities can impose fines on the basis of case law.

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5 The details on the amount of fines are laid down by the Danish Parliament in Bill No 173, 2011/12.
6 In Denmark a businessman may deduct VAT on their company car if certain conditions are met.
5 Legal Protection of the Taxpayer/Third Party

5.1 Does he/she have recourse to legal actions?
Pursuant to Article 63 of the Danish Constitution, the courts may review whether the acts of the administrative authorities are legal. This is an essential element of the system of justice.

Before a tax case is referred to court it must have been tried by the administrative appeals system; see Section 48 of the Tax Administration Act. As a general rule the taxpayer may bring their case before a court if the administrative appeals system has not dealt with their case within six months of having referred a decision to the appeal authority.

5.2 Which authority or institution has to be addressed by the taxpayer/third party if he/she wants to file an objection?
The general appeal system in Danish tax law is as follows:
The tax authority (SKAT) makes a decision. If a taxpayer wants to appeal against the decision they must appeal to the Tax Appeals Administration (Skatteenkeforvaltning), a central administrative body which makes a prior decision on which appeal system is to handle the appeal.

If the taxpayer is an individual and the appeal concerns their annual income tax return, the Tax Appeal Tribunal (Skatteankenævn) will decide on the case. The members of this tribunal are lay persons appointed by the City Council. This is the only tribunal left in the Danish tax appeals system whose members are all political appointees. The taxpayer can choose to omit this appeal body and go straight to the National Tax Tribunal (Landsskatteret); see Section 35 B(4) of the Tax Administration Act.

The National Tax Tribunal is the highest administrative tax court. Its members are a mix of political appointees and members appointed by the Ministry of Taxation. Some of the members must have a legal education and some must even be judges.

After taking a case through the administrative appeals system it is possible to refer the case to a court. It is also possible to refer a case to a court if it is not decided in the administrative appeals system within six months.

All tax decisions are initiated before a district court unless they concern fundamental issues. If a case involves fundamental issues, the parties can ask a district court to refer the case to a high court as the court of first instance.
All court decisions can be appealed once. A case decided by a district court may be appealed to a high court. A case decided by a high court may be appealed to the Supreme Court. It is only possible to appeal a decision twice if special leave to appeal is given.

5.3 Do interim measures regarding legal protection exist in your country?
As a general rule no legal claim can be made to suspend tax surcharges until the final decision has been made in the administrative appeals system. But pursuant to Section 51 of the Tax Administration Act the tax authorities have discretionary powers to grant a suspension at the request of a taxpayer. The decision must be objective and based on the facts.

It is possible to get a suspension via the court system if the taxpayer reacts within certain time-limits. An appeal against a court decision must be made within 14 days to get a suspension of the court decision; otherwise it will be enforced until the final decision is made.

5.4 Does protection through advance ruling exist in your country? If yes, what are the prerequisites
In Denmark is it possible to get a binding answer (bindende svar). This is binding on the tax authorities for up to five years. A binding answer can relate both to past transactions and contemplated transactions. To get a binding answer the taxpayer must submit a fully documented request. There is no point in trying to conceal information, as this will only result in the binding answer not being binding on the tax authorities.

A binding answer can only concern the tax consequences of a transaction, and the tax authorities can refrain from giving an answer if it is not possible to do so with the necessary certainty.

The fee for a binding answer is DKK 400, and a request for a binding answer is normally dealt with within three months.

If a question is of a more fundamental character the binding answer will be given by the Tax Council (Skatterådet), otherwise they will be given by the tax authorities. If the taxpayer disagrees with a binding answer they can either appeal the answer to the National Tax Tribunal, possibly followed by court appeals, or they can just submit the tax assessment they believe to be correct. Thus the taxpayer has two appeal possibilities; an appeal against the binding answer or an appeal against the whole tax return.
5.5 Do alternative dispute resolutions or settlements (dealing) regarding surcharges exist in your country (e.g. within tax audits)?

As a general rule, alternative dispute resolution or settlements regarding surcharges are not used in Danish tax law. However, since some surcharges depend on there being sufficient evidence of something, there can be a discussion with the tax authorities to decide the case correctly. This is not something the taxpayer has a right to, but is the normal procedure when something is uncertain.

There has been a dispute as to whether the tax authorities are obliged to take all tax matters into account (mandatory taxation), or whether they can settle with less than all (optional taxation). Perhaps the differences in opinion are not so fundamental in practice. All agree that it is appropriate to clarify what can be proved and what there is disagreement about.

5.6 Do other tax law safeguards exist in your country (does special taxpayer bill of rights exist)? Is the level of tax law safeguards in general higher/lower compared to civil, administrative or criminal rules?

There is no special taxpayer bill of rights in Denmark. The normal rights of citizens also apply to taxpayers. There has been some debate about whether taxpayers have less protection in tax cases than when an offence is dealt with under the criminal law. Pursuant to Sections 9 and 10 of the Legal Security Act (Retssikkerhedsloven) a person is protected by the criminal provisions in the Administration of Justice Act (Retsplejeloven) if, while pursuing information, there is suspicion that the person has committed a criminal offence. A person is protected by the prohibition of self-incrimination. The section on bringing the criminal provisions into force does not apply if the information is only to be used other than in criminal proceedings; see Section 9(2) of the Legal Security Act. According to some people this means that if the tax authorities only collect information about tax matters, they need not comply with the rules on the protection of suspects in the Administration of Justice Act, even if they find criminal activities. Others are of the opinion that the protection rules in the Administration of Justice Act always apply when there is a suspicion of criminal activity.

6. Deductibility of Surcharges

According to Danish tax case law, fines and other surcharges are not deductible. The same applies to tax charges and interest charges imposed by the tax authorities.
7. Numbers
It is not possible to give this information as the tax authorities do not disclose information at such a detailed level.

8. Effectiveness
It is our believe that as a country with high taxes, Denmark is very eager to prevent tax evasion. Among other things this is achieved by several provisions requiring third parties to disclose information to the tax authorities in support of tax controls. Another instrument is the imposition of penalties at a level that discourages tax evasion. The level of the fines and the duration of prison sentences should deter taxpayers from making incorrect disclosures in their tax assessments, i.e. moonlighting and other black activities.

Despite this, in 2010 the total tax gap was DKK 9.5 billion (made up of DKK 8.3 billion for undertakings and DKK 1.2 billion for individuals). In 2010 total income tax was approximately DKK 500 billion. It is expected that the new initiatives in the area of other surcharges and increased fines relating to transfer pricing described in section 2 and 3 will reduce this gap.