

Denmark

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1. Types of tax

In Denmark, both gift and inheritance taxes are levied on transfer of assets at death or by gift. The tax is either 0%, 15% or 36.25%. However, gifts may be subject to ordinary income taxation of up to approximately 52% (2021). In cases where inheritance or gifts cross the borders, the right to charge inheritance or gift tax may be granted to the other state involved, based on bilateral agreements. Denmark currently has bilateral agreements on inheritance and gift taxes with Germany, Switzerland, the US and the Nordics (except Sweden).

1.1 Inheritance tax

Danish inheritance tax will, as a main rule, be due on the estate left by the deceased. The basis for the calculation of the inheritance tax is the total net value of assets that are passed on to heirs of the deceased.



The Danish inheritance tax consists of an estate tax of 15% imposed on the net value exceeding DKK308,800 of the estate of the deceased, together with an additional tax of 25% on the estate passed on to persons other than certain close relatives. The maximum tax burden for the latter is, therefore, 36.25%, as the 15% estate tax is deducted before the 25% additional tax is calculated. However, no inheritance tax applies if the only heir is the spouse of the deceased.

Inheritance tax is levied when a person dies. Taxation can be deferred if the surviving spouse chooses to retain undivided possession of the estate. In this case, the estate is taxed after the estate is transferred to the heirs of the first deceased spouse. The estate must be transferred to the heirs after the first deceased spouse if the surviving spouse dies, or actively chooses to divide the estate of the first deceased later on (e.g., in case the surviving spouse, who retained undivided possession of the estate, chooses to get married again).

Since 1 January 2020, the inheritance tax rate for successions in which family-owned businesses are transferred to the next generation has been reversed to 15%. The former government adopted legislation that gradually reduced the inheritance tax rate from 15% to 6% between 2016 and 2019. This legislation only affected inheritance when transferring active family-owned businesses to the next generation. Consequently, since 1 January 2020, any inheritance tax rate between close relatives changed to 15%. Instead, a changed deferral scheme has been implemented. The reduced rates applicable prior to 2020 will however still be relevant for estates where the death occurred between 2016 and 2019 (both years included).

1.2 Gift tax

From a Danish perspective, a gift is considered granted when a living person promises to transfer(s) an asset without payment to another person. This is also the case even when the person giving the gift (the donor) reserves the right to make use of the asset or claims the right to the future income generated by the asset. Generally, gifts are liable to gift tax or ordinary income tax dependant on the one receiving the gift and his/her relation to the donor.

The gift tax is a proportional tax and is either 0% for gifts between spouses, 15% for gifts to close relatives (specified in Section 3.1) or 36.25% for gifts to stepparents and grandparents. Any other persons are subject to ordinary income tax on gifts at a progressive tax rate up to approximately 52% (2021).

Since 1 January 2020, the gift tax rate for successions in which family-owned businesses are transferred to the next generation has been reversed to 15%. The former government adopted legislation that gradually reduced the gift tax rate from 15% to 6% between 2016 and 2019. This legislation only affected gifts when transferring active family-owned businesses to the next generation. Consequently, on and since 1 January 2020, any gift tax rate between close relatives has changed to 15%. For gifts in the form of ownership in a family-owned active business, an implemented deferral scheme (with a possibility to pay the gift tax over a 30-year period) may be applicable, if the gift is granted in 2020 or later.

1.3 Estates

In Denmark, no real estate transfer tax exists. Instead, a registration transfer duty (stamp duty) will be levied on transfers of real estate.

The stamp duty is a combination of variable and fixed duties and is as of 1 January 2021 calculated as DKK1,750 + 0.6% (2021) of the transfer sum. However, if the transfer is between related parties, the latest public valuation of the estate may serve as the taxable basis.

If the real property is subject to gift tax, the variable part of the transfer duty (in whole or in part) can be deducted from the gift tax.

1.3.1 Exemption from the variable transfer duty

In the following situations, only the fixed stamp duty of DKK1,750 is applicable on transfer of real estate:

- ▶ A surviving spouse enters into the deceased spouse's rights and obligations (the spouse retains undivided possession of the estate). In cases where real estate is transferred between spouses as a result of a divorce or if the spouses transfer real estate from one to another and their respective newly obtained assets are covered by an agreement of complete separation of properties.
- ▶ The gift recipient is an approved charitable organization, a Danish national church or a recognized religious community in Denmark.

2. Who is liable?

2.1 Gift tax

Gift tax is applicable if either the gift donor or the recipient of the gift is domiciled in Denmark. Gifts in the form of real estate situated in Denmark and assets connected to a Danish permanent establishment (Danish *situs*) are however subject to Danish gift tax regardless of whether the gift donor or the recipient of the gift is domiciled in Denmark.

2.2 Inheritance tax

If the deceased person is domiciled in Denmark at the time of death, the market value of his or her worldwide net estate is subject to inheritance tax in Denmark. If the deceased person is domiciled outside of Denmark at the time of death, only the value of Danish real estate and assets with permanent establishment in Denmark (Danish *situs*) is subject to Danish inheritance tax, unless the administration of the estate has been referred to a Danish probate court.

3. Rates

3.1 Gift tax

Gift tax is 15% of the value of the gift exceeding DKK68,700 (2021) per year on gifts given to:

- Children, stepchildren and their children
- Deceased child's or stepchild's surviving spouse
- Parents
- Certain individuals sharing a common residence with the gift donor for at least two years prior to receiving the gift
- Foster children, if certain conditions are met

Gifts to the aforementioned persons are not taxed if the value of the gift to each person is below DKK68,700 (2021) and the gift is given within one calendar year. Married couples (including registered partners) are not taxed on gifts to each other.

Gifts to a child's spouse or stepchild's spouse with a value on or below DKK24,000 (2021) within one calendar year are not taxed. Gifts with a value exceeding DKK24,000 are taxed at 15%.

Gifts to stepparents and grandparents are taxed at 36.25%. A limit for taxation of DKK68,700 (2021) applies here as well.

Gifts to persons besides the aforementioned are liable to ordinary income tax. The taxation is progressive up to approximately 52% (2021) depending on the person's taxable income. This applies to the donor's siblings, etc. However, if the donor has no children, it may be possible to reduce the rate applied to 15% for siblings, children of the donor's siblings or grandchildren of the donor's siblings as well if the gift granted consists of an active business.

The taxation of gifts can be summarized as follows:

Gift recipient	Tax	Lower limit for taxation (2020)
Spouse	0%	N/A
Closely related	15%	DKK68,700
Children-in-law	15%	DKK24,000
Stepparents and grandparents	36.25%	DKK68,700
Distant relatives and others	Income tax up to approx. 52%	Depending on income

3.2 Inheritance tax

The inheritance tax is either 0%, 15% or 36.25% depending on the person inheriting the estate. A basic allowance of DKK308,800 (2021) per estate is deducted before the 15% estate tax is calculated.

The 15% estate tax of the total net estate value exceeding DKK308,800 (2021) is final if the estate is passed on to the following persons (close relatives):

- ▶ Children, stepchildren and their children
- ▶ Parents
- ▶ Child's or stepchild's not separated spouse
- ▶ Persons who have been living together with the deceased person for at least two years before the death
- ▶ Divorced spouse
- ▶ Foster children, if certain conditions are met

If the value of the estate is below DKK308,800 (2021), there is no inheritance tax when the estate is transferred to the aforementioned persons.

If the estate is transferred to persons other than the aforementioned, the inheritance tax is 36.25%, consisting of the 15% estate tax and the 25% additional tax.

This applies to the deceased's siblings, etc. However, if the deceased had no children, it may be possible to reduce the rate applied to 15% for the deceased's siblings, children of the deceased's siblings or grandchildren of the deceased's siblings as well if the inheritance consists of an active business.

If the value of the estate exceeds DKK3,033,700 (2021), excluding the value of the deceased person's own residence when transferred to an heir, the estate itself may be subject to ordinary estate income and capital gains tax.

The inheritance tax can be summarized as follows:

Heir	Inheritance tax	Lower limit for taxation (2020)
Spouse	0%	N/A
Closely related	15%	DKK308,800
Distant relatives and others	36.25%	N/A
Organization of public utility and the state	0%	N/A
Other organizations	36.25%	N/A

4. Exemptions and reliefs

4.1 Gifts

No gift tax is applied on gifts between spouses.

For gifts to close relatives, gifts are, as a main rule, subject to 15% gift tax, but only above a tax-exempted limit.

For further details, please see section 3.1.

4.2 Inheritance tax

There is no inheritance tax if the estate is passed on to a spouse, an organization of public utility or the state.

If the value of the estate is below DKK308,800 (2021), there is no inheritance tax.

For further details, please see section 3.2.

5. Filing procedures

5.1 Gifts

Gifts that are subject to gift tax must be reported to the tax authorities no later than 1 May in the year following the calendar year in which the gift was granted. The tax is due for payment at the time the gift is registered with the tax authorities (unless it is postponed). The gift recipient is liable for paying the tax. However, the gift donor is jointly liable for the payment of gift tax. Furthermore, the parties may agree that the donor pay the gift tax without this payment becoming a taxable gift itself.

If yearly gifts to persons are below the taxable limit (DKK68,700 and DKK24,000, respectively), no filing requirements apply. The same applies to gifts between spouses (regardless of the value of the gift).

If a donor who is fully tax liable to Denmark grants a gift with a value exceeding DKK68,700 to a person who is not fully tax liable to Denmark and the abovementioned filing requirements do not apply to this gift, the donor will be obligated to file a different notification to the Danish tax authorities and inform the Danish tax authorities of the recipients identity, the donors relation to the recipient and the size of the gift.

Gifts that are subject to income taxation must be reported by the recipient on the income tax return for the year in which the gift was granted.

5.2 Inheritance tax

If the estate of the deceased person is privately administered, the heirs must file an opening statement showing the estate's assets and liabilities at the time of death no later than six months after the estate is handed over for private administration.

Within 15 months after the time of death, the heirs must make a final estate inventory showing the estate's assets, liabilities, revenues and expenses, including the distribution between the legatees and heirs. At the same time, a tax return needs to be filed, provided the estate is actually taxable (value of the assets or net assets above DKK3,033,700).

A copy of the estate inventory signed by all the heirs must be sent to the local Danish tax authority (Skattestyrelsen) and the probate court.

Formal filing requirements may vary depending on the type of administration chosen for the estate and the tax liability.

6. Assessments and valuations

The calculation of gift and inheritance tax is based on the market value.

The gift value is determined as the market value at the time of the receipt of the promise of the gift.

The estate's assets and liabilities are assessed according to the market value at the time they are transferred to the heirs. Expenses related to the administration of an estate (e.g., legal fees) can be deducted on the basis for calculation of the inheritance tax.

7. Trusts, foundations and private purpose funds

Certain charitable institutions, funds and religious communities are exempt from inheritance tax. Every year, the Danish tax authority publishes a list with the exempt institutions.

Gifts to charitable institutions are deductible for the gift donor. The maximum deductible amount per year is DKK17,000 (2021). The deduction is conditional upon the gift recipient reporting the gift and the identification of the donor to the Danish tax authority.

Trusts (as defined in, e.g., common law countries) are not recognized in Denmark as a separate juristic or tax-liable entity.

8. Grants

This is not applicable.

9. Life insurance

If the deceased person had life insurance, the insured sum is paid directly to the person who is listed as the beneficiary. The insured sum is not included in the estate unless no beneficiary exists.

If the surviving spouse of the deceased person receives the insured sum, no estate tax has to be paid.

If anyone other than the surviving spouse is to receive the insured sum, the sum is subject to estate tax, unless inheritance tax is levied, ref. section 2.2. The rate of the inheritance tax depends on how closely related the beneficiary is to the deceased person (see above).

The lower limit for taxation of DKK308,800 (2021) is not applicable on payments from life insurance.

10. Civil law on succession

10.1 Distribution of the estate to the heirs

When a person dies, the estate is distributed to the heirs according to specific rules in the Inheritance Act. The distribution of the inheritance depends on the deceased person's family relations.

The estate to be divided between the heirs basically consists of the deceased's assets minus his/her liabilities. If the deceased was married at the time of death and the spouses owned any joint/community property,¹ only the deceased's portion of the joint property, together with his/her separate property, if any, will become subject to inheritance. The remaining part of the joint property belongs to the surviving spouse.

¹ Joint property includes all the assets each of the spouses owns at the time of the date of death, unless the assets have been made separate property by the establishment of a prenuptial agreement or by gift or will determined by a third party. The net assets of the deceased and the deceased's spouse (assets minus liabilities) are added together. The spouse then receives half of the total net assets. The other half of the parties' net assets will become subject to inheritance. If the deceased has net assets of DKK2 million, while the spouse has net assets of DKK1 million, the spouse will receive DKK1.5 million in the estate in advance. The inheritance will also amount to DKK1.5 million. If the deceased has not made a will, the spouse will then inherit DKK750,000, while the remaining DKK750,000 will be divided equally among the deceased's children.

According to the Inheritance Act, the estate will be distributed as follows if the deceased person has made no other decision by will:

- ▶ If the deceased person leaves both a spouse and children, the estate must be divided between them. The spouse inherits half of the estate of the deceased person, while the rest of the estate is divided equally among the children. The surviving spouse can usually choose to retain undivided possession of the estate. In this case, the children will inherit when the surviving spouse dies or remarries.
- ▶ If the deceased person does not have any surviving children, grandchildren or other lineal descendants, the spouse will inherit the entire estate.
- ▶ If a person dies unmarried but leaves behind children, then the estate will be divided equally between the children. If a child is dead, the child's part of the estate will go to his or her lineal descendants.
- ▶ If there is no spouse, children, grandchildren or great-grandchildren, the estate will be divided equally between the deceased person's parents. If they are dead, their part will go to their lineal descendants, if there are any.
- ▶ If there are no parents, brother or sister, or children of a brother or sister, the estate will be divided equally between the grandparents.
- ▶ If there are no grandparents and they leave no children, the estate will go to the state.
- ▶ If the deceased person has made a will, this may change the distribution of the estate.

10.2 Forced heirship

The Danish Inheritance Act contains provisions that limit a person's right to dispose of an estate by will to a certain extent.

The limitation regards one-quarter of a person's estate (i.e., a person can only dispose of three-quarters of an estate by will if the deceased leaves a spouse or children). This one-quarter may be reduced to DKK1.35 million (2021) per child.

As long as this statutory limit is observed, a person may freely dispose of his or her assets by will.

10.3 Matrimonial regimes and civil partnerships

Registered partnerships are treated the same way as matrimonial regimes.

By marriage, the spouse gets community property unless he or she enters into a separate property settlement. Whether an asset is part of the community property or separate property is significant when a married person dies or if the marriage is dissolved.

When the first spouse dies, the separate property, as a general rule, must be distributed to the heirs, while the distribution of the assets included in the community property can be either retained with the longest-living spouse or passed on to the heirs.

10.4 Probate

When a person dies, the probate court convenes the deceased person's closest heirs for a meeting to determine the administration of the estate after the deceased person. The administration may be private or public. Public administration is enforced in certain situations (e.g., if one of the heirs requests it or if the deceased person has determined it by will).

11. Estate tax treaties

11.1 Unilateral rules

Inheritance tax and gift tax paid to a foreign state, Greenland or the Faroe Islands on assets located outside Denmark can be deducted from the Danish inheritance and gift tax. The deduction cannot exceed the Danish inheritance or gift tax on the assets.