



NetApp Denmark ApS

Oslo Plads 2
2100 Copenhagen E
CVR No. 25238044

Annual report 01.05.2022 - 30.04.2023

The Annual General Meeting adopted the annual
report on 22.11.2023

Maria Felicia Murillo
Chairman of the General Meeting

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Entity details

Entity

NetApp Denmark ApS

Oslo Plads 2

2100 Copenhagen E

Business Registration No.: 25238044

Date of foundation: 01.03.2000

Registered office: Copenhagen E

Financial year: 01.05.2022 - 30.04.2023

Executive Board

Maria Felicia Murillo

Auditors

Deloitte Statsautoriseret Revisionspartnerselskab

Weidekampsgade 6

2300 Copenhagen S

Statement by Management

The Executive Board has today considered and approved the annual report of NetApp Denmark ApS for the financial year 01.05.2022 - 30.04.2023.

The annual report is presented in accordance with the Danish Financial Statements Act.

In our opinion, the financial statements give a true and fair view of the Entity's financial position at 30.04.2023 and of the results of its operations for the financial year 01.05.2022 - 30.04.2023.

I believe that the management commentary contains a fair review of the affairs and conditions referred to therein.

I recommend the annual report for adoption at the Annual General Meeting.

Copenhagen, 22.11.2023

Executive Board

Maria Felicia Murillo

Independent auditor's report

To the shareholder of NetApp Denmark ApS

Opinion

We have audited the financial statements of NetApp Denmark ApS for the financial year 01.05.2022 - 30.04.2023, which comprise the income statement, balance sheet, statement of changes in equity and notes, including a summary of significant accounting policies. The financial statements are prepared in accordance with the Danish Financial Statements Act.

In our opinion, the financial statements give a true and fair view of the Entity's financial position at 30.04.2023 and of the results of its operations for the financial year 01.05.2022 - 30.04.2023 in accordance with the Danish Financial Statements Act.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (ISAs) and additional requirements applicable in Denmark. Our responsibilities under those standards and requirements are further described in the "Auditor's responsibilities for the audit of the financial statements" section of this auditor's report. We are independent of the Entity in accordance with the International Ethics Standards Board for Accountants' International Code of Ethics for Professional Accountants (IESBA Code) and the additional ethical requirements applicable in Denmark, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the IESBA Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Management's responsibilities for the financial statements

Management is responsible for the preparation of financial statements that give a true and fair view in accordance with the Danish Financial Statements Act, and for such internal control as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, Management is responsible for assessing the Entity's ability to continue as a going concern, for disclosing, as applicable, matters related to going concern, and for using the going concern basis of accounting in preparing the financial statements unless Management either intends to liquidate the Entity or to cease operations, or has no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs and the additional requirements applicable in Denmark will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit conducted in accordance with ISAs and the additional requirements applicable in Denmark, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by Management.
- Conclude on the appropriateness of Management's use of the going concern basis of accounting in preparing the financial statements, and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures in the notes, and whether the financial statements represent the underlying transactions and events in a manner that gives a true and fair view.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Statement on the management commentary

Management is responsible for the management commentary.

Our opinion on the financial statements does not cover the management commentary, and we do not express any form of assurance conclusion thereon. In connection with our audit of the financial statements, our responsibility is to read the management commentary and, in doing so, consider whether the management commentary is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated.

Moreover, it is our responsibility to consider whether the management commentary provides the information required under the Danish Financial Statements Act.

Based on the work we have performed, we conclude that the management commentary is in accordance with the financial statements and has been prepared in accordance with the requirements of the Danish Financial Statements Act. We did not identify any material misstatement of the management commentary.

Copenhagen, 22.11.2023

Deloitte

Statsautoriseret Revisionspartnerselskab
CVR No. 33963556

Flemming Larsen

State Authorised Public Accountant
Identification No (MNE) mne27790

Management commentary

Primary activities

The company provides solutions enabling storage and management of network data to a broad range of industries.

Development in activities and finances

The result for the year is positive with DKK 23.7 million. In January 2023 the Danish Supreme Court / "Højesteret" made a ruling on the dividend distribution disputes. The ruling has not significantly impacted the financial statements.

The parent company Netapp Inc., US, and group company NetApp Ireland Limited have issued letters of comfort, in which the companies for a period of not less than 12 months from the date of the approval of the balance sheet for the period ended 30 April 2023, undertake to provide financial support to NetApp Denmark ApS ensuring that NetApp Denmark ApS can meet its financial obligations as they fall due - including the obligation to make payments on behalf of the immediate parent company regarding the dividend withholding tax dispute with the Danish tax authority. Based on the two comfort letters, management has determined that it is appropriate to present the 2022/2023 financial statements based on the going concern principle.

Management finds the company's trading performance and result of the ordinary activity for the year in line with expectations.

Update on tax disputes

In September 2010, the Danish Tax Authorities (DTA) issued a decision concluding, that dividend distributions declared in 2005 DKK 566 million and 2006 DKK 92 million by the Company were subject to Danish at-source withholding tax. DKK 158,5 million and DKK 25,8 million, respectively. Management did not believe that the Company was liable for such withholding tax and filed an appeal with the Danish Tax Tribunal / "Landsskatteretten". In December 2011, the Danish Tax Tribunal issued a ruling in favor of the Company.

The Danish tax authorities appealed this decision at the Danish High Court / "Østre landsret" (DHC) in March 2012.

In February 2016, the DHC requested a preliminary ruling from the Court of Justice of the European Union (CJEU) / "EU domstolen". Parties were heard before the court in October 2017. In March 2018, the Advocate General issued an opinion, which was largely in favor of the Company. The CJEU was not bound by the opinion of the Advocate General, and issued its preliminary ruling in February 2019. The CJEU ruling did not preclude the DTA from imposing withholding tax on dividend distributions based on the benefits of certain European Union directives.

Throughout January and February 2021, NetApp's case was heard before the DHC who issued its ruling on 3 May 2021. The conclusion reached by the DHC differed between the two years 2005 and 2006.

- With respect to the DKK 566 million dividend distribution made on 28 September 2005 the DHC found, that the dividend distribution was not subject to Danish withholding tax. For this dividend the base withholding tax claim was DKK 158.5 million.

- Conversely, with respect to the DKK 92 million dividend distribution made on 13 October 2006 the DHC found, that the dividend distribution was subject to Danish withholding tax. The DHC emphasized, that the difference in the conclusion reached was due to the fact, that the Company did not provide sufficient documentation for the DKK 92 million dividend distribution being part of the dividend, that was distributed from Network Appliance Global Ltd. (Bermuda) to NetApp Appliance, Inc. (US) as claimed by the Company. For this dividend the base withholding tax was DKK 25.8 million.

In May 2021, the DTA appealed the ruling of the DHC, and stated, that the DKK 566 million dividend distribution in 2005 should also be subject to Danish withholding tax. Since the May 2021 ruling, the Company obtained additional hard copy (paper) records that were now accessible to the Company that could provide relevant information. Such records were previously inaccessible due to COVID-19 lockdown measures. The Company has undertaken efforts to trace the funds that are in question to substantiate the Company position; namely that the beneficial owner of the dividends is NetApp, Inc. (US). Consequently, the Company has appealed the ruling of the DHC, and stated, that the DKK 92 million dividend distribution in 2006 – taking into account this new information - should not be subject to Danish withholding tax.

In 2022, the company made a payment of DKK 66.7 million towards 2006 Dividend case, in order to reduce the interest risk exposure. The DKK 66,7 million payment was recognized in the 2021/2022 financial statements as a part of other receivables.

On 9 January 2023, the Danish Supreme Court / “Højesteret” (DSC) gave its ruling which was a full reversal of the DHC’s rulings:

- The DSC ruled that the DKK 92 million dividend from 2005 should not be subject to withholding tax. The company has therefore no obligations regarding this dividend payment, and the Danish tax authorities has used the prepayment as a payment in part regarding the 2006 dividend case.
- The DSC ruled the DKK 566 million dividend from 2006 to be subject to withholding tax. As a consequence, the Company was required to pay DKK 158.5 million of withholding tax plus DKK 325 million of interest (as at 30 April 2023).

In April 2023, the withholding tax liability of DKK 158.5 million was paid by NetApp Holdings Limited, who was also responsible for the applicable withholding tax. As NetApp Holdings Limited is both considered to be the right bearer of the expense, and made the payment as well, the withholding tax claim of DKK 158.5 million has not impacted the financial position of NetApp Denmark ApS.

Consequently, as a result of the court ruling from DSC, the interest charge amounts to DKK 325 million. NetApp Denmark ApS has raised a claim with the parent company and the parent company has accepted to reimburse the danish company. Therefore the payment of interest has not impacted the financial position of NetApp Denmark ApS.

In May 2023, the Company filed a complaint with the European Court of Human Rights (ECHR) against the punitive interest, which the Company believes is an infringement of Article 6 of the European Convention on Human Rights and the corresponding provision in Article 47 of the EU Charter of Fundamental Rights. ECHR has rejected the complaint.

In June 2023, NetApp Holdings Limited paid DKK 188 million of interest.

In September 2023, the company filed an appeal with the DTA requesting a waiver/exemption of the compound interest in the amount of DKK 306 million.

In October 2023 the company has submitted an application for a part of the legal fees incurred during the tax disputes. In total a claim of DKK 26.7 million is made. As the legal fees have been incurred before 30 April 2023, management has determined to recognize a receivable of DKK 26,7 million as at 30 April 2023.

Events after the balance sheet date

No events have occurred after the balance sheet date to this date, which would influence the evaluation of this annual report.

Income statement for 2022/23

	Notes	2022/23 DKK	2021/22 DKK
Gross profit/loss		28,580,194	3,406,306
Staff costs	2	(1,801,143)	(3,278,551)
Operating profit/loss		26,779,051	127,755
Other financial income		92,185	0
Other financial expenses	3	(119,504)	(127,755)
Profit/loss before tax		26,751,732	0
Tax on profit/loss for the year	4	(3,089,995)	(209,328)
Profit/loss for the year		23,661,737	(209,328)
Proposed distribution of profit and loss			
Retained earnings		23,661,737	(209,328)
Proposed distribution of profit and loss		23,661,737	(209,328)

Balance sheet at 30.04.2023

Assets

	Notes	2022/23 DKK	2021/22 DKK
Other receivables		26,759,027	69,466,961
Financial assets		26,759,027	69,466,961
Fixed assets		26,759,027	69,466,961
Receivables from group enterprises		328,432,694	0
Other receivables		0	3,508,186
Prepayments		10,657	0
Receivables		328,443,351	3,508,186
Cash		15,248,465	21,793,242
Current assets		343,691,816	25,301,428
Assets		370,450,843	94,768,389

Equity and liabilities

	Notes	2022/23 DKK	2021/22 DKK
Contributed capital		10,000,000	10,000,000
Retained earnings		40,173,885	16,512,148
Equity		50,173,885	26,512,148
Trade payables		0	6,766
Payables to group enterprises		51,712,781	47,710,088
Income tax payable		7,652,531	4,631,943
Other payables	5	260,911,646	15,907,444
Current liabilities other than provisions		320,276,958	68,256,241
Liabilities other than provisions		320,276,958	68,256,241
Equity and liabilities		370,450,843	94,768,389
Going concern	1		
Group relations	6		

Statement of changes in equity for 2022/23

	Contributed capital DKK	Retained earnings DKK	Total DKK
Equity beginning of year	10,000,000	16,512,148	26,512,148
Profit/loss for the year	0	23,661,737	23,661,737
Equity end of year	10,000,000	40,173,885	50,173,885

In April 2023, the withholding tax liability of DKK 158.5 million was paid by NetApp Holdings Limited, who was also responsible for the applicable withholding tax. As NetApp Holdings Limited is both considered to be the right bearer of the expense, and made the payment as well, the withholding tax claim of DKK 158.5 million has not impacted the financial position of NetApp Denmark ApS.

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Notes

1 Going concern

The parent company Netapp Inc., US, and group company NetApp Ireland Limited have issued letters of comfort, in which the companies for a period of not less than 12 months from the date of the approval of the balance sheet for the period ended 30 April 2023, undertake to provide financial support to NetApp Denmark ApS ensuring that NetApp Denmark ApS can meet its financial obligations as they fall due - including the obligation to make payments on behalf of the immediate parent company regarding the dividend withholding tax dispute with the Danish tax authority. Based on the two comfort letters, management has determined that it is appropriate to present the 2022/2023 financial statements based on the going concern principle.

2 Staff costs

	2022/23 DKK	2021/22 DKK
Wages and salaries	1,623,292	3,100,700
Pension costs	177,851	177,851
	1,801,143	3,278,551
Average number of full-time employees	1	1

3 Other financial expenses

	2022/23 DKK	2021/22 DKK
Other interest expenses	42,598	87,364
Exchange rate adjustments	56,105	26,421
Other financial expenses	20,801	13,970
	119,504	127,755

4 Tax on profit/loss for the year

	2022/23 DKK	2021/22 DKK
Current tax	2,814,278	209,328
Adjustment concerning previous years	275,717	0
	3,089,995	209,328

5 Other payables

	2022/23 DKK	2021/22 DKK
Wages and salaries, personal income taxes, social security costs, etc. payable	167,596	616,342
Holiday pay obligation	250,775	602,891
Other costs payable	260,493,275	14,688,211
	260,911,646	15,907,444

6 Group relations

Name and registered office of the Parent preparing consolidated financial statements for the smallest group:
NetApp Inc., 495 East Java Drive, Sunnyvale, CA 94089, USA

Accounting policies

Reporting class

This annual report has been presented in accordance with the provisions of the Danish Financial Statements Act governing reporting class B enterprises with addition of a few provisions for reporting class C.

The accounting policies applied to these financial statements are consistent with those applied last year.

Recognition and measurement

Assets are recognised in the balance sheet when it is probable as a result of a prior event that future economic benefits will flow to the Entity, and the value of the asset can be measured reliably.

Liabilities are recognised in the balance sheet when the Entity has a legal or constructive obligation as a result of a prior event, and it is probable that future economic benefits will flow out of the Entity, and the value of the liability can be measured reliably.

On initial recognition, assets and liabilities are measured at cost. Measurement subsequent to initial recognition is effected as described below for each financial statement item.

Anticipated risks and losses that arise before the time of presentation of the annual report and that confirm or invalidate affairs and conditions existing at the balance sheet date are considered at recognition and measurement.

Income is recognised in the income statement when earned, whereas costs are recognised by the amounts attributable to this financial year.

Foreign currency translation

On initial recognition, foreign currency transactions are translated applying the exchange rate at the transaction date. Receivables, payables and other monetary items denominated in foreign currencies that have not been settled at the balance sheet date are translated using the exchange rate at the balance sheet date. Exchange differences that arise between the rate at the transaction date and the rate in effect at the payment date, or the rate at the balance sheet date, are recognised in the income statement as financial income or financial expenses. Property, plant and equipment, intangible assets, inventories and other non-monetary assets that have been purchased in foreign currencies are translated using historical rates.

Income statement

Gross profit or loss

Gross profit or loss comprises revenue, other external expenses and other operating income.

Revenue

Revenue from the sale of services is recognised in the income statement when delivery is made to the buyer. Revenue is recognised net of VAT, duties and sales discounts and is measured at fair value of the consideration fixed.

Other operating income

Other operating income comprises income of a secondary nature as viewed in relation to the Entity's primary

activities.

Other external expenses

Other external expenses comprise expenses for distribution, sale, marketing, administration, premises, bad debts, etc.

Staff costs

Staff costs comprise salaries and wages, and social security contributions, pension contributions, etc for entity staff.

Other financial income

Other financial income comprises interest income and exchange gains on transactions in foreign currencies.

Other financial expenses

Other financial expenses comprise interest expenses, including interest expenses on payables to group enterprises, net capital or exchange losses on securities, payables and transactions in foreign currencies, amortisation of financial liabilities, and tax surcharge under the Danish Tax Prepayment Scheme etc.

Tax on profit/loss for the year

Tax for the year, which consists of current tax for the year and changes in deferred tax, is recognised in the income statement by the portion attributable to the profit for the year and recognised directly in equity by the portion attributable to entries directly in equity.

Balance sheet**Receivables**

Receivables are measured at amortised cost, usually equalling nominal value, less writedowns for bad and doubtful debts.

Prepayments

Prepayments comprise incurred costs relating to subsequent financial years. Prepayments are measured at cost.

Cash

Cash comprises cash in hand and bank deposits.

Other financial liabilities

Other financial liabilities are measured at amortised cost, which usually corresponds to nominal value.

Tax receivable or payable

Current tax receivable or payable is recognised in the balance sheet, stated as tax computed on this year's taxable income, adjusted for prepaid tax.