

Koerver Schmidt. Dansk CFC-beskatning – i et internationalt og komparativt perspektiv



Reviewed by
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The book is the author's PhD thesis. In regard to the PhD thesis there has only been made minor corrections during the proof-reading. The thesis was defended May 27, 2013 on CBS, where he also subsequently has been employed as an assistant professor. Both before and during the course of Peter Koerver Schmidt's PhD, he has been employed in the accountancy firm Deloitte in their Cross-border Tax department. This work has given the author inspiration to a lot of the problem areas in the thesis. Especially when it comes to the thesis' research area about CFC tax rules - which is a protection against specific forms of tax minimizing - is it highly relevant with practical input, because the processing and the discussion of theory otherwise can be very heavy, detached from reality and inapplicable.

In general the CFC rules entail that income earned by another legal person - typically a subsidiary company - is included in the taxable income of the Danish parent company. The CFC tax rules are anti-avoidance rules which seek to hinder that shareholders can get deferral of taxation or completely avoid taxation by placing mobile income in foreign subsidiaries domiciled in countries, where the locale rules prescribe low or no taxation at all. CFC used to stand for Controlled Foreign Company and did only apply with respect to companies domiciled in foreign countries. Because of problems concerning compliance with EU law, the rules now also apply in purely domestic sit-

uations. Accordingly, in a Danish context the abbreviation now stands for Controlled Financial Company.

The book contains 604 pages including appendices which cover changes of the CFC rules, bibliography, table of cases and subject index.

Part 1 - introduction (p. 19-111). Chapter 1 contains presentation of research area and methodology. Because the CFC rules are anti-avoidance rules they are constructed with a very technical and detailed touch, but Peter Koerver Schmidt is fortunately attentive to the balancing act between focus on the general guidelines and at the same time he includes details which makes the thesis useful. To understand the CFC tax rules' construction and content, it is of vital importance that the rules' background and purpose are known. This is analyzed in chapter 2 in the book and the rules' development is analyzed in chapter 3.

Part 2 - the CFC rules' substantial content (p.115-360) is the first of the thesis' two main parts. In this part the actual content is analyzed in the present CFC rules. Chapter 4 deals with the CFC rules' scope of application and exceptions. Chapter 5, 6 and 7 focus on elements in the rules, which constitutes the principal conditions and which are difficult to define. The CFC rules only apply if the shareholders have control over the subsidiary companies and the subsidiary companies have mobile income. Chapter 5 deals with the issue of when the actual control condition is satisfied. The definition of mobile incomes is presented in chapter 6. Chapter 6 concerns the relevant financial income, which has to constitute more than half of the subsidiary company's income in order for the CFC rules to apply. Likewise the chapter deals with the asset condition, which states that the subsidiary company's financial assets must constitute more than 10% of the company's total assets in order for the rules to apply. Subsequently, chapter 7 deals with the CFC rules' legal effects.

Part 3 - the situation regarding double taxation agreements and the EU law (p. 363-518) constitutes the other half of the thesis' main field. Even though the CFC rules today also are used in purely domestic matters, the purpose of the rules is to prevent placement of mobile income in companies domiciled in foreign low tax countries. Because the CFC rules entail enhanced taxation, naturally there will be doubts when it comes to the rules' compatibility with EU law and Denmark's double taxation agreements. Chapter 8 deals with the CFC rules and their relations to double taxation agreements, while chapter 9 deals with CFC rules in terms of compatibility to the EU law.

The last part of the thesis - part 4, contains, as chapter 10, recapitulation and policy considerations. Furthermore there is an abstract and a summary.

Peter Koerver Schmidt has in his thesis chosen to compare the Danish rules with the rules in Sweden, Norway, Great Britain and the USA. The comparative element is particularly well incorporated into the book due to the fact that the rules are compared continuously and at the same time Peter Koerver Schmidt's choice of comparable countries is appropriate because they all can provide considerable inspiration and alternative angles of approach.

The book is definitely recommendable to people who are occupied with tax law on a theoretical level but also practitioners who seek guidance in the interpretation of concrete matters of dispute. The analyses are thorough and plausible. Peter Koerver Schmidt has a good language usage and he is able to explain technical and complicated stuff in an accessible way.