THE CORIT POINT OF VIEW

Volume 10 December 2021



Editorial

Dear reader,

Welcome to the 2021 edition of The CORIT Point of View. This edition is a special one to us, since the turn of the year will mark our 10th anniversary. Needless to say, we are extremely proud of our achievements and the trust placed in us by so many outstanding individuals and companies. During 2022, we will arrange certain activities to celebrate the anniversary. We promise to continue to do our best every day, to continue to earn the trust and look forward to the coming decade at the forefront of internation-al taxation.

For the newcomers, this publication is not a newsletter in its traditional sense, but contains technical and academic information produced in the past year as well as other information about the many activities of CORIT.

The ambition of *The CORIT Point of View* – or CPOW as we call it ourselves – is to keep you informed on recent and future activities by providing overview and easy access to a selection of recent publications and presentations. You can find the articles and presentations simply by clicking the below titles. The content is also made available on an ongoing basis via our webpage with the kind consent of our publishers. Visit www.corit-advisory.com and our LinkedIn group CORIT Advisory to explore the sources. Producing and communicating research-based knowledge is deeply rooted in our corporate values.

Once again let us take a glance at the current international tax landscape and the most recent developments.

During 2021, the world was still challenged by the COVID 19 pandemic. Most areas of life as we know it have been affected but there is light at the end of the tunnel. We sympathise with those having been affected the most, families and individuals but also the business owners having to shut down their businesses and potentially see their livelihood perish.

On the global tax scene, 2021 was the year where a historical agree-ment was reached under the OECD Inclusive Framework with respect to the Two Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy. This agreement has been finally approved at the G20 meeting in Rome 30-31 October and includes 137 countries. The final agreement regarding both Pillars aims to make significant changes to the current international tax system.

There is little content in the agreement which in fact has to do with the digitalization of the economy, since ringfencing the digital businesses prevented reaching a compromise. Rather, we are witnessing a redistribution of revenue to market states as well as a continued battle against tax competition.

Pillar One addresses the general demand from market states to obtain an increased taxation right from the



largest and most profitable companies (comprising approx. 100 companies). Consequently, the overall aim of the Pillar One agreement is to reallocate more tax revenue to market states rather than to HQ states.

The agreement puts in scope multinational enterprises with a global turnover above 20bn EUR and profitability ratio above 10% (profit before tax/revenue). Once these thresholds are met and when revenue of at least 1M EUR derives from a specific state (place of final consumption), a multinational enterprise should allocate 25% of the profits exceeding 10% profitability to that market state (referred to as "Amount A"). In other words, and contrary to the existing tax system, the mere generation of revenue may trigger a taxable presence. The exact allocation key is yet unknown but presented as a revenue-based allocation key. Pillar Two introduces a new global 15% minimum tax through new complex tax legislation (known as "Global Anti-Base Erosion Proposal (GloBE"). This initiative has much broader implications than Pillar One. Both pillars are expected to result in EU harmonizing legislation.

We now await the proposed technical details regarding both Pillars. Once these are presented, the implementation phase will commence. We expect this to generate a lot of work for legislators, authorities, and not least, the companies in scope.

On the international tax policy scene, we continue to see that tax matters are increasingly moving up the public agenda and that increasing tax transparency is becoming unavoidable. Responsible behaviour in tax matters is now considered a standard requirement among investors. This is also why we see an increasing focus on the design of tax policies, tax strategies and communication efforts regarding such matters. Many corporations have already been inspired by the B Team principles and the global Reporting Initiative (GRI #207) and we believe that many more will follow. The recent agreement on EU level regarding mandatory public CbCR, in our view, will push this transparency agenda even further and set an even higher standard.

We observe and assist more and more multinational enterprises and financial institutions in engaging in the tax policy discussions, in order to tell their side of the story and to impact the policy design of new legislation. We have become even more heavily involved in such matters and we are quite impressed by the demand for this type of services in the current landscape.

All the above tendencies will ultimately lead to increased burdens in terms of compliance, increased risk of double taxation, and increased legal uncertainty of which we are only just witnessing the first results.

Some may think that the rapid developments in international tax are bewildering and frustrating. At CORIT, we consider ourselves lucky to live in such times, where international tax is moving up the global agenda, since international tax happens to be our passion and livelihood.

Yet another year has passed, and we have had a successful year despite the bewildering times. We are humbled and grateful and are ready to work even harder to continue our success.

Without further ado, please enjoy the newsletter.

Jakob Bundgaard



Team Developments

We have welcomed a number of new team members during 2021.

In January 2021, we welcomed assistant Sofie Cecilie Friis to the team. Sofie is studying Master of Law at the University of Copenhagen and assists broadly with tax matters.

In September 2021, we proudly announced the addition of Thomas Svane Jensen as new associate partner and thereby the expansion of our services into the area of VAT. Thomas brings with him more than 20 years of experience, including as a tax partner, nordic head of VAT, and as co-founder of tax boutique firm. In his practice, Thomas Svane Jensen focuses on complex VAT issues and is often engaged by leading multinational enterprises and financial institutions as a trusted advisor with strategic impact.

In October 2021, we welcomed two additional colleagues. We welcomed David Schjelde as senior director of transfer pricing. David will contribute with a broad experience combined with the technical skills needed to excel in transfer pricing. David has extensive experience in management and business strategy. From the role as CFO he has helped set up and implement corporate structures, transfer pricing strategies and procedures as well as IPR strategies and procedures.

We also welcomed Andrea Højgaard Jørgensen as a new team member at CORIT. With a background as master of business administration and commercial law as well as some transfer pricing experience, Andrea will be working along the rest of the team on a broad variety of matters for our clients. We are sure that Andrea will bring great value to CORIT and our clients.

News

We are proud to share that CORIT Advisory maintains and strengthens its Tier 1 status in the 2022-edition of World Tax by International Tax Review. CORIT is now one of only two firms ranked to be a Tier 1 firm for both General Corporate Tax and Tax Controversy. CORIT is the only tax boutique firm to have reached this position.

Moreover, we maintain the ranking as a leading firm within Transfer Pricing reflecting our increasing efforts within the area, which will be expanded even further in the coming years.

Rankings

General corporate tax

Tier 1
CORIT Advisory
Deloitte
EY
KPMG Acor Tax
Plesner
PwC

Tax controversy

Tier 1
Bjørnholm Law
CORIT Advisory
Plesner

For us, this reaffirms our strategic choices and values, including commitment to technical capabilities, quality and client service. We are thankful and honored to be recognized by our clients and peers once again as one of the elite tax firms in Denmark and assure you that we take nothing for granted.

CORIT-member Louise Fjord Kjærsgaard successfully defended her PhD thesis within international tax law at Copenhagen Business school. The title is "Allocation of the Right to Tax Income from Digital Products and Services". In her thesis, Louise focuses on identifying the relevant transactions and payments for tax treaty purposes, as well as classification and PE challenges in highly digitalized business models.

Louise has furthermore been appointed local representative of the newly established Danish branch of Young IFA Network – a network specifically



aimed at younger people working with tax law, studying, or researching within tax law or otherwise interested in tax law. The network will arrange events, where, in addition to a professional presentation, there will be the opportunity to network with young tax-interested colleagues.

As an examples of our impactfull assignments, you can read about a recent important case below. We mention on this because of the principled nature of the case and the fact that the Tax Tribunal has decided not to publish the case. The tax controversy team at CORIT Advisory successfully represented an international company before the Danish Tax Tribunal. The case concerned the question of whether a construction permanent establishment existed or not during the construction of the Copenhagen Metro. The case concerned several highly principled legal topics. It was won with reference to interpretation of the applicable tax treaty, including to what extent later versions of the commentaries to the OECD's Model Tax Convention has legal value.

The Danish Tax Tribunal amended the decision made the Danish Tax Authorities in accordance with our main arguments. Accordingly, the concrete double tax treaty should be interpreted in accordance with the commentaries to the OECD's Model Tax Convention prepared before 2003 (where the relevant guidelines were revised). The Danish Tax Tribunal emphasized that the interpretation of Article 5(2)(g) was "amended" by the revised version of the commentaries to the OECD's model tax convention from 2003 and considered the revised commentaries – in accordance with the claim made by CORIT – as material amendments and not mere clarifications. The case shows that unlawful claims made by the Tax Authorities can be overturned using the right arguments. In this case, the legal foundation of the Danish Tax Authorities was severely flawed and directly in contradiction with international doctrine. We are therefore, pleased to see that the Danish Tax Tribunal rules in favor of the foreign company.

Impact

Publications

- Kvalifikationen af udenlandske enheder – forsøg pa systematisering af nyere praksis fra perioden 2013-2021 (Bundgaard, Tell and Friis)
- Skattemæssig kvalifikation af depositary receipts (Bundgaard)
- Den skatteretlige omga elsesklausul (Bundgaard, Kjærsgaard & Tell)
- Embedded royalties – en ny skat pa udenlandske IP-rettigheder (Bundgaard)
- Strømninger i debatten om ansvarlig skat (Bundgaard)
- Grænseoverskridende fusion – endnu en gang anset for at udgøre omga else (Bundgaard)
- Nye prøveballoner fra EU-Kommissionen– luftkasteller fremtidens skattesystem (Bundgaard)
- Tanker om en reel grøn skattereform – en utopi? (Bundgaard)
- Yderligere eksempler fra praksis vedrørende den generelle omga elsesklausul (Bundgaard)
- Taxation and Value Creation (Weber, Guldhammer, Kjærsgaard)
- 15%'s reglen ved overdragelse af fast ejendom (Winther-Sørensen)
- Beneficial owner og ligningslovens § 3 ved udbytter og renter fra danske datterselskaber (Winther-Sørensen)
- Forskning og udvikling (Winther-Sørensen)
- Fradrag i Danmark for underskud i udenlandske datterselskaber samt vedrørende faste driftssteder og fast ejendom beliggende i udlandet (Tell)
- The Ability to Pay and Economic Allegiance: Justifying Additional Allocation of Taxing Rights to Market States (Kjærsgaard)

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INDEPENDENT TAX CONSULTING



- Implementeringen af skatte-undgaelsesdirektivets CFC-regler i dansk ret – en retlig analyse med komparative og EU-retlige overvejelser (Schmith)
- Implementation of the ATAD Rules on Controlled Foreign Companies – A Nordic Member State Perspective (Schmith)
- Legal Pragmatism – A Useful and Adequate Explanatory Model for Danish Adjudication on Tax Avoidance? (Schmith)
- International Skatteret 2020-2021 (Laursen)
- Kommentarer til udvalgte afgørelser - Tilflytning og 10-dages reglen (Laursen)
- Hjemmehørende i en kontraherende stat og begreberne "kollektivt investeringsinstitut" og kollektivt investeringsinstrument" (Laursen)
- Nye regler om fast driftssted i dansk ret (Laursen)
- Rentefikseringsdommen (Laursen)
- Kruse-dommen Kommanditisters fradragskonto og praksisændringer (Laursen)
- Lærebog om Indkomstsskat (Laursen)
- Allocation of the Right to Tax Income from Digital Products and Services (Kjærsgaard)
- Høringssvar vedr. L7 (Kjærsgaard and Weber)
- Skattelovgivningen anno 2021 (Bundgaard)

Presentations

In 2021, the following presentations (+ many others) have been delivered by CORIT members:

- Danmarks skatteadvokater 2021 – Aktiela n – De forventede nye indeholdelsesregler – status
- Fagligt netværk januar 2021-Nyheder og seneste afgørelser
- Fagligt netværk april 2021-Nyheder og seneste afgørelser
- Fagligt netværk juni 2021 - De danske CFC-regler
- FSR Danske Revisorer – International beskatning: Hvor er selskaber hjemmehørende?
- FSR Danske Revisorer – International beskatning: Hvem er retmæssig ejer
- FSR Danske Revisorer – International beskatning: Udviklingen vedrørende den generelle omgaelsesklausul
- FSR Danske Revisorer – International beskatning Danske domme og eu-domme m.m.
- Danmarks skatteadvokater 2021 – Aktiela n – De forventede nye indeholdelsesregler
- M&A seminar for law firms
- The Current and Future Role of CFC Legislation in the Nordic Countries

Work in progress

- Danish Branch Report in IFA Cahier de droit fiscal international, 2021 Congress in Berlin, Subject 1 - Group approach and separate enti-ty approach in domestic and international tax law (Tell and Weber)
- Skattemæssige problemstillinger ved rejsning af risikovillig kapital (Kjærsgaard and Weber)
- Branch report: Fiscal policies to mitigate climate change (Schmidt, Ørberg and Kjærsgaard)
- Tax History – Danish National Report, in "EATLP International Tax Series" (Schmidt)
- Constitutional Limits on Taxation in Denmark (Schmidt)
- Beskatning af arv og gaver med fokus pa overdragelse af erhvervsvirksomhed inden for familien – forskelle i den dansk-svenske retsudvikling (Schmidt)
- Juridisk metode i skatteretten – for eksperter (Schmidt)
- Earn outs i tværdiscilplinær belysning (Bundgaard)
- Green Business Models and their tax ramifications (Bundgaard)
- Danish Branch Report in IFA Cahier de droit fiscal international, 2021 Congress in Berlin, Subject 2 - Big Data and Tax – Domestic and International Taxation of Data Driven Business (Bundgaard and Kjærsgaard)
- Kildeskat pa renter (Winther-Sørensen)

Future events

As a celebration of our 10th anniversary, we will host a big international tax conference in Denmark on the 9 March 2022 with international speakers and guests. The overall theme of the conference will be the major developments within international taxation during the past decade as well as important topics for the years to come. The conference will be open to everybody, and we will communicate separately about this event.

Other activities

CORIT team members continues to be represented in a number of tax associations including The European Association of Tax Law Professors, International Fiscal Association, Danish Venture Capital Private Equity Association, Danish Association of EU Tax Law and the Danish Tax Law Council.

Thank you all for a 2021 to remember!

Jakob Bundgaard	*Katja Dyppel Weber*	*Niels Winther-Sørensen*	*Michael Tell*
Thomas Svane Jensen	*David Schjelde*	*Henrik Guldhammer Nielsen*	*Louise Fjord Kjærsgaard*
Magnus Vagtborg	*Anders Nørgaard Laursen*	*Peter Koerver Schmidt*	*Andrea Højgaard Jørgensen*
Jens Bundgaard	*Michelle Dupont Astrupgaard*	*Anna Sofie Burmeister-Sørensen*	*Sofie Cecilie Friis*

Contact us:

Give us a call for further information about the CORIT Point of View or our tax consulting services.

CORIT Advisory is a boutique firm specializing in international tax. Our finest ambition is to assist businesses address, manage, and mitigate tax risks in a rapidly changing global environment. We offer a unique combination of practical and applicable tax advisory services with the knowledge and insight of academia. CORIT Advisory assists domestic and foreign corporations (including multinational enterprises), private equity funds, and financial institutions.

CORIT Advisory provides high quality services within a specified area of expertise. Our areas of expertise fall within certain specified categories, international corporate tax, transactions, structuring and corporate finance, digital busi-ness models, transfer pricing, strategic tax advice, value added tax, and tax controversy. Our tax advisory services are based on a thorough business, and framework understanding, a true advisory approach (not a sales agenda), relentless focus on quality and technical competences, independence and a truly international perspective. Our services comprise: tax planning, tax policy & strategies, tax risk mitigation, day to day managing of uncertainties, project consultancy (short or long term), reviews, opinions, rulings, controversy and reputational issues.