

THE CORIT POINT OF VIEW

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ADVISORY®
INDEPENDENT TAX CONSULTING



Editorial

Dear reader,

Welcome to the 2018 edition of The CORIT Point of View – or CPOV as we call it ourselves. For newcomers, this publication is not a newsletter in a traditional sense, but contains technical and academic output produced by CORIT during the past year, as well as other information about the many activities of CORIT.

Producing research-based knowledge is deeply rooted in our corporate values and the ambition of CPOV 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.

Further, with the kind consent of our publishers, the content is made available on an ongoing basis via our webpage: www.corit-advisory.com and via our LinkedIn group [CORIT Advisory](#).

Before we present the CORIT production, let's take a glance at the current international tax landscape and recent developments therein.

On the international scene, tax matters are increasingly considered important. Tax leakages, the European Cum-Ex scandal and the fight against tax dodging fills the public landscape.

The tendency continues towards increased transparency in tax matters. As an example, in the past year, the EU Directive on Administrative Cooperation (DAC) 6 on mandatory reporting and exchange of information regarding certain cross-border arrangements has been agreed upon and is now pending implementation into domestic laws of all EU Member States. This is a new regime, where tax advisors or taxpayers must report to the authorities whenever they engage in cross-border arrangements, which fall under the scope of the Directive. We see this initiative to be part of a glob-

al tendency on transparency and we believe that it will not end here.

“Fairness in taxation” or “fair share taxation” continue to be widely used buzzwords among certain policy-makers. In sum, taxes are still moving up the political and societal agenda.

The media coverage of tax structures of specific multinational enterprises continues to be harsh, and intense media campaigns can immediately affect the reputation of taxpayers who are singled out. This is why, we experience an increased focus on the design of tax policies, tax strategies and communication efforts regarding such matters. An important initiative in this regard is the launch of the B Team principles for responsible tax; aiming to set a new standard. Many corporations have already been inspired by the B Team principles and we believe that many more will follow.



Further the biggest US tax reform in decades has been on top of the agenda for countries and companies alike. With a lowering of the corporate income tax rate in combination with newly invented anti-abuse legislation with inspiring names such as the “BEAT” or “GILTI” (the Americans surely are gifted when it comes to acronyms). The passing of this reform fundamentally changes the global tax landscape, and the behaviour of US corporate taxpayers, as well as foreign corporate taxpayers operating in the US. In addition, several rules are essentially designed to curb the previous practices of US multinational enterprises.

The BEPS tsunami is still alive and kicking. Many countries are still in the process of transposing the BEPS principles into increasing regulatory requirements and strengthened legislation while the Multilateral Instrument (MLI) is simultaneously gaining support.

Within the EU, the Anti-Tax Avoidance Directive should be implemented by the beginning of 2019. As a

minimum directive, this procedure is bound to lead to problems. We have already observed that some EU Member States see the implementation as a good opportunity to introduce rules, which go even further than required by the EU. An important part of the Anti-Tax Avoidance Directive is the GAAR. Such a provision is a novelty in many countries and we foresee that this tool in the hands of tax authorities will be handled with domestic differences, e.g. due to differences in legal culture, which will definitely *not* contribute to ensuring legal certainty for taxpayers. Future guidelines from the European Court of Justice will be greatly sought for but probably take many years.

We are still certain that the BEPS project and the Anti-Tax Avoidance Directive will ultimately lead to increased burdens in terms of compliance, increased risk of double taxation and increased legal uncertainty; the results of which we are only just beginning to witness.

Readers of previous versions of CPOV will be familiar with our commitment to understand the tax ramifications of the digitalization of the economy on the tax systems. Digital business models challenge the existing tax systems and may cause opportunities as well as risks and uncertainties for companies engaging in digital activities. At the same time the digitalization of the economy is

turning into the new frontier in the international tax battle, where populist rhetoric is used among policy-makers around the globe, which is not evidence based and not in accordance with tax policy standards. Our commitment to this agenda has grown even stronger in 2018 and will continue to do so, in order to understand the tax challenges of the digital age and to provide clever solutions for our clients. We expect to increase our efforts within advisory, lecturing, writing and researching on this topic.

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.

Upcoming events

CORIT Seminar on:

International Group Taxation for in-house tax teams, CFOs etc.:

Covers the latest tendencies and developments within international taxation of relevance to MNEs.

**4 February 2019, 2-5 pm
7 February 2019, 9-12 am
5 March 2019, 9-12 am**

NB: Limited seats are available and the seminar includes a fee of DKK 3,000.

**Sign up by contacting
Simone Kronborg Riis
(skr@corit.dk)**



Yet another year has passed and we have had a successful year. We feel humble and grateful and are ready to work even harder to continue our success.

Our professional efforts continue to lie within international tax in a broad sense. In 2018, we have successfully increased the awareness of the actual breadth of our service offering, which continues to include international tax law, corporate tax, M&A, structuring, corporate finance, EU law, tax treaty issues, tax risk management, digital business models, tax controversy, tax policy and tax strategy initiatives within multinational enterprises. Similarly, we continue to see that our transfer pricing efforts pick up in light of tightened legislation in several jurisdictions.

Without further ado, please enjoy this newsletter.

Jakob Bundgaard

Team Developments

We are very proud that CORIT Advisory has been strengthened in 2018.

Michael Tell

We had the pleasure of appointing Michael Tell as associate partner in the firm. Michael has been a driving force since the inception in 2012 and we expect him to be a key member of the team going forward. Michael is a leading expert on international corporate tax, including EU law. In particular, Michael has developed an expertise within the area of corporate finance, interest limitation rules, M&A and structuring.

Henrik Gulddammer Nielsen

We are pleased to welcome Henrik Gulddammer Nielsen, as senior director to our team. Henrik is a seasoned advisor with experience from Big 4 advisory as well as extensive inhouse experience as a tax director. Henrik joins the team with a primary focus on transfer pricing, M&A and structuring but will also be advising broadly on international corporate tax matters.

Simone Kronborg Riis

We had the pleasure of welcoming Simone who assists on a wide range of our clients while also providing internal service. Simone studies business law at Copenhagen Business School.

News

As of August 2018 our managing director, Jakob Bundgaard, has been appointed professor of international tax law at the University of Aalborg. The focus of the professorship is to carry out research on tax abuse in international tax law. With this appointment, Jakob will move a bit closer to academia but, will continue as his primary task to assisting our clients in international tax and tax strategy matters. We see this appointment as an endorsement of our relentless focus on technical competencies and legal capabilities.

Michael Tell has been appointed as national reporter for Denmark for the 2019 IFA conference on the topic Interest Deduction Limitation Legislation.

Publications

In 2018, the following books, articles, blog posts and reports have been published by CORIT team members.

Books

In 2018, CORIT team members Anders Nørgaard Laursen and Peter Koerver Schmidt have contributed with a country chapter on Denmark in:

- Corporate Tax Residence and Mobility, ed. Edoardo Traversa

Moreover Anders Nørgaard Laursen has co-authored a new book on International Tax Law:

- International Skatteret (4th ed.)



Articles

- When are Domestic Anti-Avoidance Rules in Breach of Primary and Secondary EU Law?
- First Domestic Decisions on the 2015 Parent-Subsidiary Directive GAAR Implementation: Guiding Principles for EU Member States?
- The Creation of a Permanent Establishment Through the Use of Subcontracting – A New Danish Ruling Adds to the Discussion
- Allocation of the Right to Tax Income from Digital Intermediary Platforms – An Analysis of the Interaction between Platforms and the Users
- The Emergence of Denmark’s Tax Treaty Network – A Historical View
- Fradrag for erhvervsmæssige udgifter i koncerner efter ligningslovens § 8 N - i et EU-retligt perspektiv
- Koncernfinansiering i lyset af negative renter — en analyse af reglerne om transfer pricing og rentefradragsbegrænsning
- International skatteret 2017-2018

- Kommentarer til udvalgte afgørelser: Minktæver, juletræsavlere og andet godtfolk - hvornår udøver et udenlandsk foretagende virksomhed her i landet?
- Skattemæssig kvalifikation af en udenlandsk fond, dobbeltbeskatningsoverenskomstbeskyttelse og EU-retten
- Ændringer af fast driftssteddefinitionen afledt af BEPS-projektet
- Skattemæssig behandling af virtuelle valutaer

Newspaper, cronicles and blog posts

- Skat mangler i regeringens digitale strategi
- Fradragsregler trænger til et servicetjek
- Stadig usikkerhed om skat på bitcoin efter melding fra Skatterådet
- Knudrede skatteregler udfordrer potentialet i ICOs
- Uklarhed om kryptovaluta-beskatning kalder på ny lovgivning
- Politikerne afsporer skattedebat og leverer uværdig kritik

Reports

As national reporter Michael Tell has authored the Danish national report of the 2018 EATLP conference on the topic: Tax Transparency

- Tax Transparency (Denmark)

As national reporters Jakob Bundgaard and Anders Nørgaard Laursen

have authored the Danish National reports of the 2018 IFA conference, on the topics:

- Withholding Tax in the Era of BEPS, CIV’s and the Digital Economy
- Anti-avoidance Measures of General Nature and Scope —GAAR and Other Rules.

As a member of the Danish Tax Law Council Jakob Bundgaard has co-authored the following reports:

- Styrket indsats mod skattely - udveksling af oplysninger, hvidvask og straf
- Styrket indsats mod skattelyskærkelse af rådgiveransvar

Presentations

In 2018 the following presentations have been delivered by CORIT members:

- Tax Consequences of the Digitalization of the Economy
- Tax Planning under Pressure
- The Danish IFA report: Withholding Tax in the Era of BEPS and the digital Economy
- Digitalization of the Economy
- Danish/Swedish Tax Network— Danish CFC taxation in light of the Anti-Tax Avoidance Directive
- Taxation of Multinational Enterprises - Recent Developments
- Finansielle kontraktens erhvervsmæssige tilknytning



- EU-selskabsskatteret, digitalisering og nye forretningsmodeller
- Skattemæssige udfordringer som følge af digitalisering af økonomien
- Dansk skattevidenskabelig forening, Rentefradragsbegrænsninger, ACE og EU-retten
- Fagligt netværk februar
- Fagligt netværk april
- Fagligt netværk juni
- Fagligt netværk september
- Koncernseminar 2018
- Beskatning af finansielle kontrakter
- Koncernfinansiering

Speeches

- Presentation for Demokrati i Europa Oplysningsforbundet (DEO) arrangement in the Danish Parliament (No slides)
- Tax issues of intra group financing on the IFA seminar held on 25 October 2018 (No slides)
- Danish taxation of cryptocurrencies (No slides)

- Karnov Award 19 April, 2018 (No slides)
- The perspective of hiring Ph.D.s (no slides)
- MNEs and the use of tax havens (No slides)

Recorded lectures on Youtube

- Digitalization of the Economy— setting the Scene from a Tax Perspective
- Tax implications of the Digitalization of the Economy

Work in progress

We continue to work on analyzing the General Anti-Abuse Rule, the Anti Tax Avoidance Directive and the digitalization of the economy. Consequently, several projects are underway within this area.

Articles

The limits for tax planning on the basis of case law.

- The Taxation of Cryptocurrencies from a Danish and Swedish Perspective (Kjærsgaard and Arfwidsson)
- Allocation of the Right to Tax Payments for Cloud Computing-as-a-Service: A legal analysis from a tax treaty perspective (Kjærsgaard)
- Avoidance and Abuse – A Contemporary Analysis of Danish Tax Law (Schmidt)
- Permanent Establishment for Investors in Private Equity Funds – A Legal Analysis in Light

of the Changes to the OECD Model (2017) (Schmidt)

- Implementering af skatteundgåelsesdirektivet (ATAD) i dansk ret (Schmidt, Bundgaard and Tell)
- Status på omgåelsesklausulen i ligningslovens § 3 (Bundgaard, Kjærsgaard, Tell and Aarup)

Books and reports

- A monograph on Taxation of Oil & Gas in Denmark (Bundgaard, Weber and Aarup)
- A new edition of the monograph on taxation of derivatives (Weber)
- Summaries of Danish tax treaty case law on the IBFD database (Kjærsgaard and Aarup)

Other activities

In 2018 CORIT Advisory launched a new website: www.corit-advisory.com displaying profiles, services and impact. We used this opportunity to discontinue www.corit-academic.org as we have merged the sites. Moreover, we launched our new simplified company presentation, which presents the breadth of our services. You can find it [here](#).

In 2018, Jakob Bundgaard by special invite participated in the Tax Policy day 2018 arranged by the Danish minister for taxation.

As part of Louise Fjord Kjærsgards PhD-studies, she participated in the poster program of this year's IFA congress in Seoul.

- Allocation of the Right to Tax Payments for Digital Technologies



Finally, CORIT continues to be represented in various committees:

- Jakob Bundgaard is a member of the academic committee of the European Association of Tax Law Professors (EATLP).
- Jakob Bundgaard is a member of the tax committee under the Danish Venture Capital Association (DVCA)
- Jakob Bundgaard is a member of the board of the Danish IFA branch .
- Michael Tell is a member of the board of the Danish Association for EU Tax Law.
- Anders Nørgaard Laursen is a member of the Permanent Scientific Committee under IFA.

About CORIT Advisory

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 MNEs), 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 business models, transfer pricing, strategic tax advice 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.

Thank you all for a splendid 2018!

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