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# Danish Input Statement – Session 2 – Implementing ATAD Article 7 & 8

Rust Conference 2019, Vienna University of Economics and Business

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# Danish Implementation

- A failed attempt, at least so far...

	Current Danish CFC Regime	ATAD CFC Rules, Art. 7(2)(a)
General scope	Danish and foreign subsidiaries/PEs No low tax condition No EU substance carve-out	Foreign subsidiaries/PEs Low tax condition EU Substance carve-out
Definition of control	Legal test, deciding influence = voting rights > 50 % (+ constructive ownership test)	Legal and economic test, capital, voting rights or profits > 50 % (+ associated enterprises)
Assets of the CFC	Asset test: Financial assets > 10 % of total assets	No asset test
Tainted income	Tainted income > 1/2 Mobile and financial income (partly overlap with ATAD)	Tainted income > 1/3 Also income from invoicing companies other income from IP

- Other income from IP → Embedded royalty
- **No low tax condition + no substance carve-out + embedded royalties → Very broad CFC regime**

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# Danish Input Statement – Session 6 – CFC Legislation & EU Law

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- After C-196/04 *Cadbury Schweppes*: DK tried to ensure compatibility by applying CFC rules equally to foreign and domestic CFCs
  - No different treatment of comparable situations
- Challenged in the literature – Still *de facto* different treatment?
  - The rules only leads to an additional tax burden if the CFC is resident in another country in which the level of taxation is lower than the Danish level
  - Thus the Danish parent company – seen in isolation – still experiences a tax disadvantage when the subsidiary is located in an MS with lower tax
  - The enlarged scope was not expected to generate any additional revenue → MS "circumvention" of primary EU law?
- What about C-319/02 *Manninen* & C-157/10 *Banco Bilbao*?
  - They did not concern CFC legislation
  - Maybe appropriate to distinguish between more basic national rules (e.g. to eliminate double taxation) and anti-avoidance rules that deliberately are meant to neutralize tax benefits of other MS?