Tiltrædelsesforelæsning

Peter Koerver Schmidt
Academic Advisor, CORIT Advisory
Professor, Copenhagen Business School

Hvad er en tiltrædelsesforelæsning?

"When an academic is promoted or appointed to the post of professor, and occasionally reader, in higher education, they are usually expected to deliver an initial lecture which is open to all, and which allows them to introduce and expound upon their existing body of work or their current research in their specialist field. This event is known as their inaugural lecture."

Kilde: Oxford Reference, Oxford University Press

10 interessante år

2013 → **2023**

Disposition

- Tema: Skatteretlige værnsregler i en dansk, nordisk og europæisk kontekst – udviklingslinjer og aktuelle udfordringer
  - CFC-regler
  - GAARs

- Udviklingslinjer
  1) Fra "key pressure areas" til anbefalinger
  2) Fra anbefalinger til nye værnsregler på tværs af EU
  3) Fra nye værnsregler til håndtering af den digitale udfordring
  4) Fra digitale udfordringer til minimumsbeskatning

- Aktuelle udfordringer
  - Hvori består de?
  - Hvad skal vi gøre?

- Drinks☺

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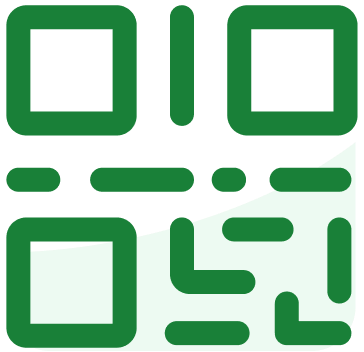

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Eksisterer der "en international skatteret"?

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Eksisterer "den internationale skatteret"?

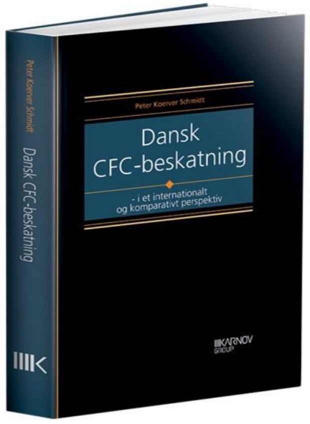
"Strictly, there is no 'international' taxation. Only nations and their subdivisions impose taxes. The subject known as 'international taxation' involves international aspects of tax systems arising in national environments."
Isenbergh (2010), p. 3.

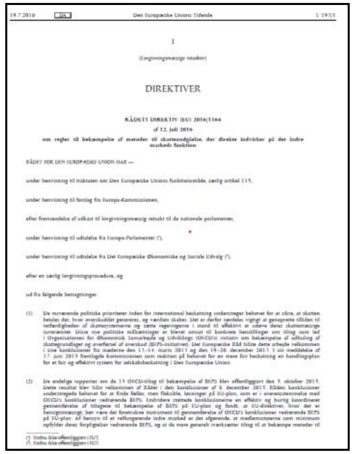
Udviklingslinjer

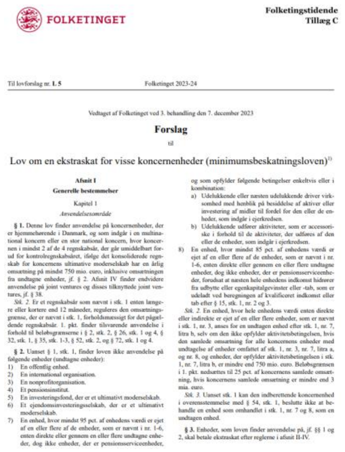
CORIT ADVISORY

Udviklingslinjer – Selskaber og værnsregler

	1		2		3		4	
25/5-2013		5/10-2015		20/6-2016		20/12-2021		7/12-2023







Periode 1 (2013-2015)

Copenhagen Business School
HANDELSHØJSKOLEN

Formål og afgrænsning

Formål

1. Udlede gældende ret (*de lege lata*)
2. Vurdere reglerne ud fra retspolitiske hensyn
3. Bud på alternativ udformning (*de lege ferenda*)

Afgrænsning

- Skatteretlig synsvinkel
- CFC-regler i snæver forstand
- Kun CFC-regler for selskaber mv.

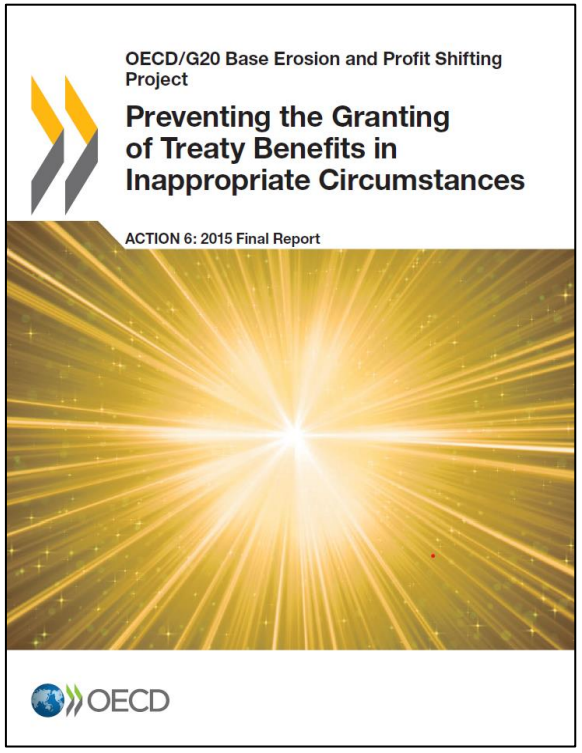
27.05.2013 Ph.d.-forsvar 4

”Noget er under opsejling”

- Skat udland, 2013(207), p. 440 ff.
- Internationales Steuerrecht, 2013, p. 417 ff.
- IFA Cahiers, 2013, p. 259 ff.
- European Taxation, 2014, p. 3 ff.
- Nordic Tax Journal, 2014, p. 113 ff.
- SR-skat, 2014, p. 162 ff.
- SR-skat, 2014, p. 255 ff.
- Tidsskrift for skatter og afgifter, 2015(238), p. 1655 ff.

Periode 2 (2015-2016)

- OECD BEPS Project – Final reports
  - Action 3 – CFC ”building blocks”
  - Action 6 – Principal Purpose Test



”Stilhed før storm”

- Nordic Tax Journal, 2016, p. 113 ff.
- SR-skat, 2016, p. 151 ff.

Periode 3 (2016-2021)

”Festen er begyndt”

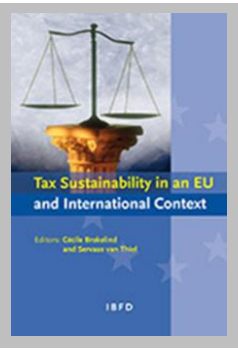
- SR-Skat, 2016, p. 383 ff.
- Revue européenne et international de droit fiscal, 2018, p. 489 ff.
- SR-skat, 2019, p. 53 ff.

Periode 3 (2016-2021)

Research question

Can the EU Anti-Tax Avoidance Directive (ATAD) be expected to promote tax fairness and thereby contribute to increased sustainability of the international tax regime?

2



Conclusions

- ATAD will have considerable impact on MS' corporate tax systems
- Too early to fully assess the merits of the ATAD
- Based on a legal (juridical) approach to fairness…
  - The ATAD does create legal uncertainty (in particular in the short run)
  - The use of both multiple SAARs and a GAAR could be questioned (risk of double taxation)
  - The ATAD is not a best solution and perhaps not even a second best solution, e.g. it does not provide full harmonization
  - However, the ATAD allegedly is a step forward
    - Some coordination better than no coordination
    - Expected to reduce aggressive tax planning opportunities for MNEs
    - MNEs will be taxed more in line with their ability to pay
    - Enhance equality among taxpayers and businesses
    - Improve public perception of the fairness of the international tax system and thereby contributing to sustainability

8

Periode 3 (2016-2021) – CFC-regler

Sweden/Finland/Denmark

Peter Koerver Schmidt, David Kleist** and Juha Lindgren****

Implementation of the ATAD Rules on Controlled Foreign Companies – A Nordic Member State Perspective

This article analyses the implementation of the controlled foreign company (CFC) rules in the ATAD in the Nordic Member States. In addition to comparing the amended CFC regimes of Sweden, Finland and Denmark, the authors discuss their relationship with EU primary law and the expected impact of the OECD's work on Pillar Two. Although material differences between the CFC regimes still exist, the authors find the ATAD to be a step in the right direction.

1. Introduction

Controlled foreign company (CFC) legislation, a type of specific anti-avoidance rule first introduced in the United States in 1962,[1] has become commonplace throughout the world.[2] In recent years, this development has gained additional momentum due to, among other things, the OECD/G20 BEPS Project. The Action 3 Final Report of the BEPS Project sets out recommendations for the design of CFC rules and urges countries to introduce or reinforce such rules.[3]

This renaissance of CFC rules is particularly strong in the European Union, which introduced the EU Anti-Tax Avoidance Directive (2016/1164) (ATAD) in July 2016.[4]

The ATAD contains legally binding anti-avoidance measures that all Member States must implement in order to close off aggressive tax planning opportunities, including a general anti-avoidance rule (GAAR) and four specific anti-avoidance rules (SAARs).[5] One of these SAARs is a CFC rule that aims to eliminate the incentive for shifting income to subsidiaries in low or no-tax jurisdictions by reattributing the income of the subsidiary to the parent company.[6] As with the other anti-avoidance rules in the ATAD, the CFC rule should also be considered a minimum standard and the ATAD, therefore, does not preclude the application of domestic CFC rules aimed at safeguarding a higher level of protection for domestic corporate tax bases.

All three of the Nordic Member States – i.e. Finland, Sweden and Denmark – already had CFC rules in place before the adoption of the ATAD. As the design of these Member States' national CFC rules deviated, in some respects, from that of the ATAD CFC rule, however, all three Member States needed to amend their CFC rules.[7] Even though the need to revise the respective CFC rules was caused by the same event – the adoption of the ATAD at the EU level – the legislative processes and responses of the three Nordic Member States turned out to be rather dissimilar.

Against this background, the aim of this article is to analyse the ATAD's CFC rule from the perspective of the Nordic Member States and to discuss the extent to which the overall goal of the ATAD has been achieved in respect of CFC legislation. In this regard, it should be reiterated that the ATAD is aimed at ensuring an effective, swift and coordinated implementation of the OECD anti-BEPS measures at the EU level. In other words, coordinated action was found to be necessary in order to ensure the functioning of the internal market and, thus, maximize the positive effects of the initiative against BEPS.

Following this brief introduction, section 2. of the article focuses on presenting the ATAD's CFC rule and analysing the actual implementation of this rule by the Member

* **Professor with special responsibilities in tax law at Copenhagen Business School, Adjunct Professor at Norwegian School of Economics and Academic Advisor with CORIT Advisory. The author can be contacted at pks.law@cbs.dk.**

** **Professor at University of Gothenburg. The author can be contacted at david.kleist@law.gu.se.**

** **Professor at University of Vaasa. The author can be contacted at juha.lindgren@uwasa.fi.**

1. For more information on the development of controlled foreign company (CFC) legislation in the United States, *see*, for example, G. Kraft & D. Beck, *Fifty Years of Subpart F Revisited in the Light of Modified Economic Conditions*, 40 Intertax 12, pp. 683-690 (2012); and B.J. Arnold, *A Comparative Perspective on the U.S. Controlled Foreign Corporation Rules*, 65 Tax Law Rev., pp. 473-502 (2012).
2. For a quite recent account of the spread of the CFC rules, *see* Tax Foundation, *CFC Rules Around the World*, Fiscal Facts no. 659 (2019).
3. OECD, *Designing Effective Controlled Foreign Company Rules – Action 3: 2015 Final Report* (OECD 2015), Primary Sources IBFD [hereinafter *Action 3 Final Report*]. For more about BEPS and the report on CFC legislation, *see*, for example, M.A. Kane, *The Role of Controlled Foreign Company Legislation in the OECD Base Erosion and Profit Shifting Project*, 68 Bull. Intl. Taxn. 6/7 (2014), Journal Articles & Opinion Pieces IBFD; A.P. Dourado, *The Role of CFC Rules in the BEPS Initiative and in the EU*, British Tax Rev. 3, pp. 340-363 (2015); and D.W. Blum, *Controlled Foreign Companies: Selected Policy Issues – or the Missing Elements of BEPS Action 3 and the Anti- Tax Avoidance Directive*, 46 Intertax 4, pp. 296-312 (2018).
4. Council Directive 2016/1164 of 12 July 2016 Laying down Rules against Tax Avoidance Practices that Directly Affect the Functioning of the Internal Market, OJ L 193/1 (2016), Primary Sources IBFD [hereinafter ATAD].
5. For a general overview and analysis of the ATAD, *see* P. Pistone et al., *The Implementation of Anti-BEPS Rules in the EU: A Comprehensive Study* (P. Pistone & D. Weber eds., IBFD 2018), Books IBFD.
6. Recital 12 ATAD.
7. *See also* P.K. Schmidt, *Taxation of Controlled Foreign Companies in Context of the OECD/G20 Project on Base Erosion and Profit Shifting as well as the EU Proposal for an Anti-Tax Avoidance Directive – An Interim Nordic Assessment*, Nordic Tax J. 2, pp. 87-112 (2016).

31 MARCH 2020

UNIVERSITA' DEGLI STUDI DI PADOVA

CFC Legislation in an OECD & EU Context

Professor WSR Peter Koerver Schmidt, PhD

Diritto Tributario dell'Impresa
Anno Accademico 2020/2021

Periode 3 (2016-2021) – CFC-regler

ATAD-implementation of CFC-rules

CBS COPENHAGEN BUSINESS SCHOOL HANDELSHØJSKOLEN

Member state	CFC rules pre ATAD	ATAD model	Low tax condition	Substance carve-out
Belgium	No	B	Yes	n/a
Bulgaria	No	B	Yes	n/a
Cyprus	No	B	Yes	n/a
Denmark	Yes	A	No	No
Estonia	No	B	Yes	n/a
Finland	Yes	A	Yes	Yes
France	Yes	A	Yes	Yes
Grækenland	Yes	A	Yes	Yes
Italy	Yes	A	Yes	Yes
Ireland	No	B	Yes	n/a
Latvia	No	B	Yes	n/a
Lithuenia	Yes	A	Yes	n/a
Luxembourg	No	B	Yes	n/a
Croatia	No	A	Yes	Yes
Malta	No	B	Yes	n/a
The Netherlands	No	(A)	Yes	Yes
Poland	Yes	A	Yes	Yes
Portugal	Yes	A	Yes	Yes
Rumania	Yes	A	Yes	Yes
Slovenia	No	A	Yes	Yes
Slovakia	No	B	Yes	n/a
Spain	Yes	A	Yes	Yes
United Kingdom	Yes	B	Yes	n/a
Sweden	Yes	A	Yes	Yes
Czech Republic	No	A	Yes	Yes
Germany	Yes	A	Yes	Yes
Hungary	Yes	A	Yes	Yes
Austra	No	A	Yes	Yes

- CFC rules before ATAD: Around 1/2
- Model A after ATAD: Around 2/3
- Model B efter ATAD: Around 1/3
- Still significant variations, but
  - All MS (except Denmark) only apply the rules cross-border
  - All MS (except Denmark) includes a low-tax condition
  - All MS that have opted for Model A (except Denmark) apply a substance carve-out.

11

Periode 3 (2016-2021) – CFC-regler

Implementation in Nordic MS

		
• Control: X ≥ 25 % of votes/capital/profits	• Control: X ≥ 25 % of votes/capital	• Control: X > 50 % of votes/capital/profits
• Only foreign entities/PEs	• Only foreign entities (not PEs)	• Foreign and domestic (no low tax test!)
• Low tax test: X < 60 %	• Low tax test: X < 55 % and "white-list"	
• Model A	• Model A	• Model A
• Income test: No	• Income test: No	• Income test: CFC income > 1/3
• Substance carve-out: Yes, EU/EEA and 3rd states if…	• Substance carve-out: Yes, EU/EEA	• Only a limited/partial substance carve-out for other IP income
• Inclusion: Entity method	• Inclusion: Entity method	• Inclusion: Entity method (optional)

Periode 3 (2016-2021) – CFC-regler

IMPLEMENTERINGEN AF SKATTEUNDGÅELSESDIREKTIVETS CFC-REGLER I DANSK RET – EN RETLIG ANALYSE MED KOMPARATIVE OG EU-RETLIGE OVERVEJELSER

Peter Koerver Schmidt, ph.d., professor MSO ved Copenhagen Business School, professor II ved Norges Handelshøyskole og Academic Advisor hos CORIT Advisory

I artiklen behandles de ændringer til CFC-reglerne, der er foretaget med vedtagelsen af L 89 (2020/2021). Herved er de danske CFC-bestemmelser for selskaber blevet tilpasset EU's skatteundgåelsesdirektiv. Forud for vedtagelsen er gået et langstrakt forløb, hvor det voldte store besværligheder at finde en løsning, der på fornuftig vis kunne forene en korrekt implementering af direktivet med lovgivers stærke ønske om at bevare den særegne og ganske omfattende danske model for CFC-beskatning. Til sidst lykkedes det dog at opnå flertal for et forslag, der ændrer på en række centrale elementer i CFC-reglerne, både med hensyn til betingelserne for reglernes anvendelse og retsvirkningerne. Disse ændringer behandles i artiklen, og afslutningsvis gøres en række komparative og EU-retlige overvejelser.

1. GENERELT OM DEN DANSKE IMPLEMENTERING AF DIREKTIVET

Den 3. juni 2021 vedtog Folketinget langt om længe de regler, der skal bringe Danmarks bestemmelser om CFC-beskatning af selskaber i overensstemmelse med EU's skatteundgåelsesdirektiv (herefter benævnt *ATAD*, der står for Anti-Tax Avoidance Directive, eller blot *direktivet*).[1] Ændringerne er baseret på lovforslag L 89 (2020/2021), der blev fremsat af skatteministeren den 11. november 2020.[2]

Regler om controlled foreign companies (populært kaldet *CFC-regler*) har normalt til formål at værne mod, at koncerner kan opnå skattemæssige fordele ved at placere mobil/passiv indkomst i udenlandske datterselskaber, der lokalt er undergivet lav eller ingen beskatning. Reglernes retsvirkning består i, at moderselskabet – såfremt visse betingelser er opfyldt – skal medregne det udenlandske datterselskabs indkomst til sin egen skattepligtige indkomst. Derved skulle CFC-reglerne gerne eliminere eller reducere incitamentet til at placere indkomst i sådanne udenlandske lavt beskattede datterselskaber.[3]

Forud for vedtagelsen er der gået en langstrakt proces, hvori det viste sig at være overordentligt svært at finde og opnå enighed om en hensigtsmæssig måde at implementere direktivets CFC-bestemmelser på. De nye CFC-regler var således allerede en del af lovforslag L 28 (2018/2019), der under den tidligere borgerlige regering blev fremsat den 3. oktober 2018, og havde til formål generelt at implementere ATAD i dansk ret.[4] I relation til CFC-reglerne voldte det dog store besværligheder at finde en løsning, der på fornuftig vis kunne forene nødvendigheden af at sikre korrekt implementering af direktivets CFC-bestemmelser med lovgivers stærke ønske om at bevare den særegne danske model for CFC-beskatning (dvs. anvendelse af reglerne også på rent nationale forhold).[5] Som en konsekvens blev ændringerne vedrørende CFC-beskatning udskilt til et særskilt lovforslag,[6] L 28 B (2018/2019), der imidlertid faldt bort som følge af det folketingsvalg, der blev udskrevet den 7. maj 2019.[7]

Den nye socialdemokratiske regering fremsatte den 6. november 2019 et nyt lovforslag om ændring af de danske CFC-regler, L 48 (2019/2020), der i vid udstrækning lignede det forslag, som den tidligere borgerlige regering havde fremsat før valget. Igen opstod der dog udfordringer med på fornuftig vis at kombinere den særegne danske model for CFC-beskatning med en korrekt implementering af direktivet, og da lovbehandlingen samtidig blev afbrudt pga. covid-19-pandemien, blev lovforslaget ikke færdigbehandlet i folketingsåret 2019/2020.[8]

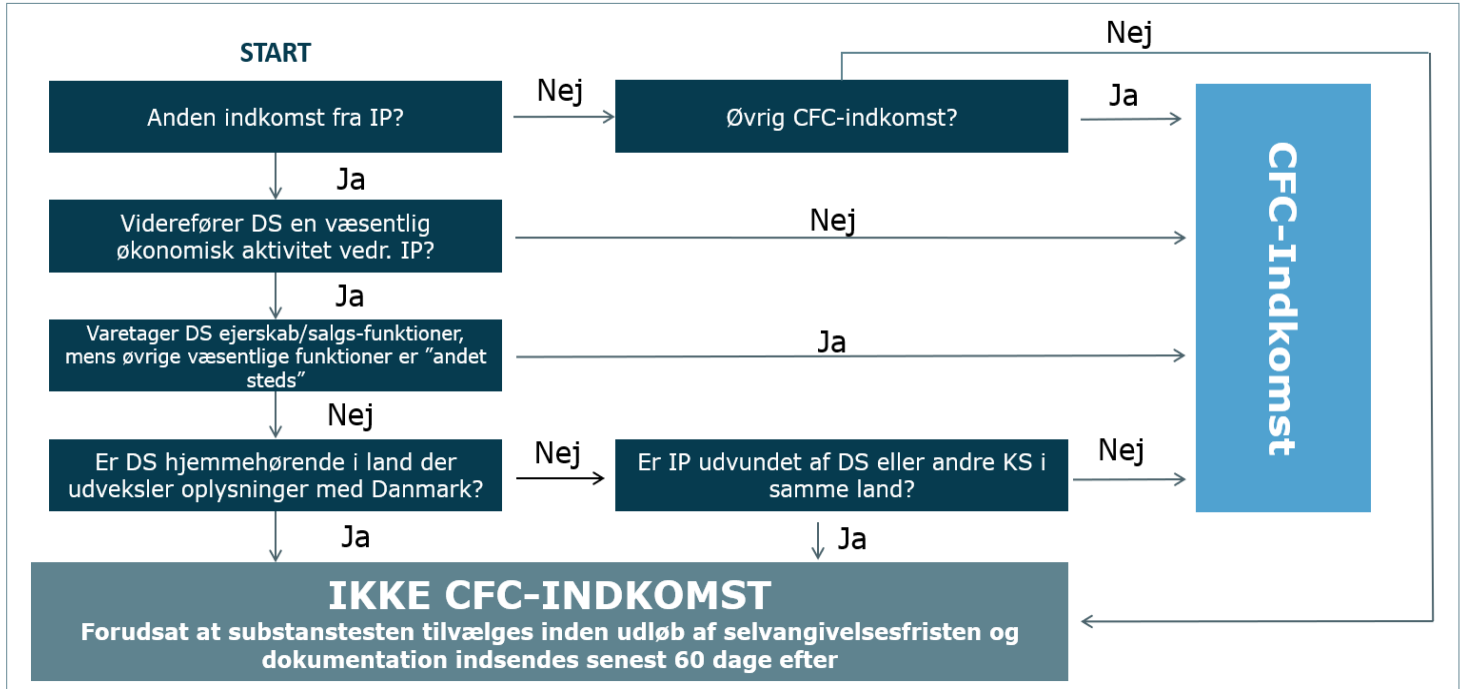
I efteråret 2020 forsøgte den socialdemokratiske regering sig på ny og fremsatte den 11. november 2020 lovforslag L 89 (2020/2021). Det er dette lovforslag, der – efter endnu en covid-19-udsættelse, svære politiske drøftelser og en række justeringer – endelig blev vedtaget som lov nr. 1180 af 8. juni 2021.

Denne artikels formål er at præsentere de vedtagne ændringer samt behandle de mere problematiske elementer heri. Som introduktion præsenteres kort i afsnit 2 og 3 CFC-bestemmelserne i ATAD samt de hidtil gældende danske CFC-regler. Derefter behandles de materielle ændringer af de danske CFC-regler i afsnit 4,[9] mens der i afsnit 5 og 6 foretages en vurdering af de vedtagne regler på baggrund af komparative og EU-retlige overvejelser. Artiklen afsluttes med en overordnet vurdering af det nye regelsæt i afsnit 7.

2. KORT OM CFC-REGLERNE I ATAD

Rådet for Økonomi og Finans vedtog ATAD den 12. juli 2016.[10] Direktivet kan ses som et forsøg på en koordineret implementering af anbefalingerne i OECD's BEPS-projekt,[11] og hovedformålet med direktivet er at imødegå visse typer af aggressiv skatteplanlægning og skatteundgåelse, der negativt påvirker det indre marked, med henblik på at sikre, at selskaber kommer til at betale skat dér, hvor indkomsten genereres. Direktivet er et udtryk for minimumsregulering, idet direktivet ikke skal forhindre anvendelsen af nationale eller aftalebaserede regler, der har til hensigt at sikre en højere grad af beskyttelse af de nationale skattebaser, jf. direktivets art. 3. Direktivet finder anvendelse på alle skattesubjekter, som er selskabsskattepligtige i en eller flere medlemsstater, herunder også faste driftssteder i en

CFC-indkomsten



14

Periode 3 (2016-2021) – GAARs

- General anti-abuse rule – ATAD Artikel 6
- Den generelle omgåelsesklausul – LL § 3

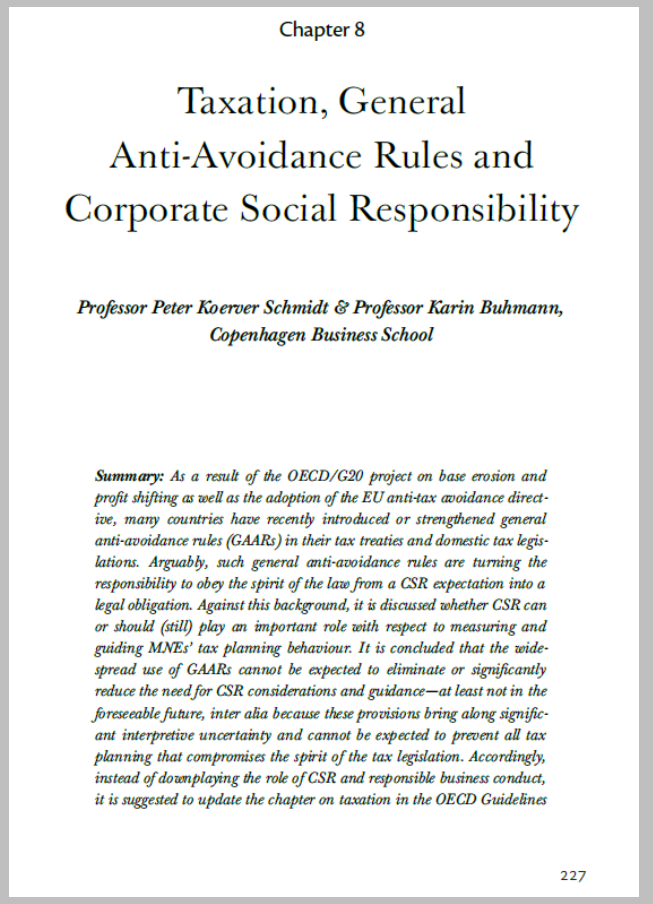
- Visse fortolkningsmæssige vanskeligheder
  - Men har fundet sit leje (praksis fra SR)

- Næppe forfatningsretlige problemer i DK

- Har ikke ført til ophævelse af SAARs

- Har ikke overflødiggjort ESG på skatteområdet

- Og er tilgangen på tværs af EU egentlig blevet mere ens?
  - 12 MS har ingenting gjort!



Chapter 8

Taxation, General Anti-Avoidance Rules and Corporate Social Responsibility

Professor Peter Koerver Schmidt & Professor Karin Buhmann, Copenhagen Business School

Summary: *As a result of the OECD/G20 project on base erosion and profit shifting as well as the adoption of the EU anti-tax avoidance directive, many countries have recently introduced or strengthened general anti-avoidance rules (GAARs) in their tax treaties and domestic tax legislations. Arguably, such general anti-avoidance rules are turning the responsibility to obey the spirit of the law from a CSR expectation into a legal obligation. Against this background, it is discussed whether CSR can or should (still) play an important role with respect to measuring and guiding MNEs' tax planning behaviour. It is concluded that the widespread use of GAARs cannot be expected to eliminate or significantly reduce the need for CSR considerations and guidance—at least not in the foreseeable future, inter alia because these provisions bring along significant interpretive uncertainty and cannot be expected to prevent all tax planning that compromises the spirit of the tax legislation. Accordingly, instead of downplaying the role of CSR and responsible business conduct, it is suggested to update the chapter on taxation in the OECD Guidelines*

227

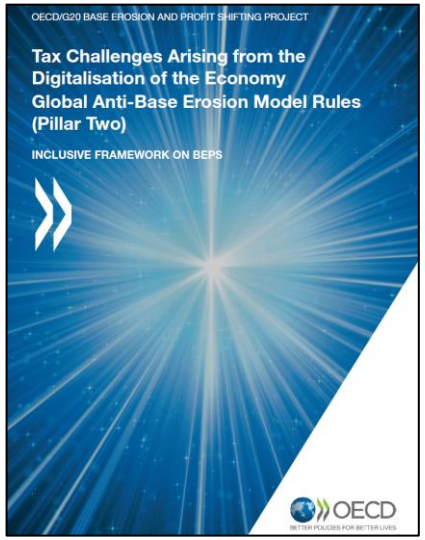
- In "FairTaxation & CSR", Ex Tuto 2019, 227 ff.
- Review of International & European Economic Law, 2023, p. 92 ff.

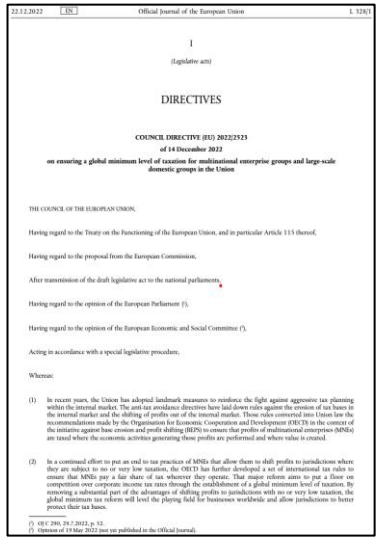
Periode 3 (2016-2021) – GAARs

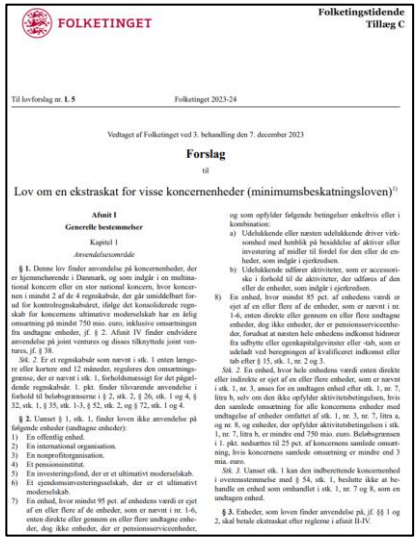
	Finland	Sweden	Norway	Denmark
Legal basis	Statutory GAAR	Statutory GAAR	Statutory GAAR	Statutory GAAR
Year of Adoption	1943	1980	2019	2015/2018
Tax advantage	**Yes**	**Yes** ("Significant")	**Yes**	**Yes**
Motive/ purpose test	**Yes** The tax benefit must be the obvious or essential purpose. If the taxpayer can present genuine and sufficient business reasons for his actions, the GAAR cannot be applied. However, thin business reasons are not enough to shield the taxpayer.	**Yes** The tax benefit must be the defining purpose. If there are any non-tax reasons for structuring the arrangement in the chosen way, and they appear as the principal purpose, the GAAR is not applicable.	**Yes** The arrangement must demonstrate that its "main purpose" is to save tax (basic requirement). Yet, non-tax purposes that are secondary to the tax purpose, can potenially protect the taxpayer, in the comprehensive assesment of whether the arrangement constitutes a non-recognizable avoidance scheme.	**Yes** The tax benefit must be "one of the main purposes". Additionally, the GAAR stipulates that the arrangement must not be genuine. If the transaction is carried out for "valid commercial reasons" that reflect reality it can be genuine, even if one of the main purposes is to obtain a tax benefit.
Objective or subjective motive/purpose test?	**Both** Under the GAAR's first prong, where a conflict between substance and form must be demonstrated, it matters what purposes the transaction objectively promotes. The GAAR's second requirement delves into the actual motives.	**Objective** based on external factors related to the transaction.	**Objective** Based on how a rational actor would reason in the same situation.	**Both** While 'one of the main purposes' is viewed as a subjective test, the assessment of whether the arrangement is genuine based on valid commercial reasons is objective
Substance over form argumentation	Application necessitates that the form does not align with the transaction's true nature or objective.	Not recognized under the GAAR	Important to demonstrate that the transaction lack non-tax substance/effects, or that the effects reflect another form that would not result in the tax benefit.	Transaction must not be genuine, when emphasising commercial reasons and economic reality.
Defeating legislative purpose	Relevant, but not strictly required to demonstrate a conflict with legislative purpose.	Only applicable if the tax benefit defeats the purpose of the tax legislation.	Relevant to demonstrate a conflict with the purpose of the circumventet tax legislation, but it is formulated as an important factor in the comprehensive assessment, not as an absolute requirement.	Only applicable if the tax benefit defeats the object and purpose of the tax legislation.
Primary Legal effect	Recharacerization	Recharacerization	Recharacerization	Recharacerization
Who can apply the GAAR?	Ordinary tax authorities	Tax authorities must bring the case before the Swedish Administrative Court	Ordinary tax authorities	Tax authorities must bring the case before the National Tax Council

Periode 4 – (2021-2023)

- OECD Pillar 2 – En værnsregel?
- Oprindelig en udløber af BEPS Action 1 (2015)
  - "Addressing tax challenges of the digital economy"
  - "Delrapporter" i 2018, 2019, 2020
  - Modelregler i 2021 – Pillar 2 – Minimumsbeskatning
  - Minimumsbeskatningsdirektiv (2022/2523)
  - Minimumsbeskatningslov (lov nr. 1535 af 12.12.2023)







- Festskrift til P.M. Hansen, Ex Tuto 2016, p. 489 ff.
- Nordic Journal of Commercial Law, 2018, p. 146 ff.
- Intertax, 2020, 983 ff.
- SR-skat, 2022, p. 83 ff.
- Journal of Global Legal Studies, 2023, p. 227 ff.

Periode 4 (2021-2023)

ARTICLE

A General Income Inclusion Rule as a Tool for Improving the International Tax Regime – Challenges Arising from EU Primary Law

Peter Koerver Schmidt*

”Tømmermænd i sigte”

Pros and Cons of Design Options

CBS COPENHAGEN BUSINESS SCHOOL HANDELSHØJSKOLEN

1. Including an intra-EU substance carve-out
   - Pros: Safest route to ensure alignment with EU primary law, reduces the sovereignty infringement
   - Cons: Undermines the policy goal of mitigating tax competition (also for real activities), and could entail proliferation of demands for carve-outs

2. Justify the the rule on ”balanced allocation” or on a new ground, e.g. the need for establising a level playing field…
   - Pro: Better in line with the policy goal of the GloBE Proposal
   - Con: Less clear whether ECJ would accept such justification

3. Try removing any discriminatory effects by applying the rules also to purely domestic situations
   - Same as under alternative 2, but creates extra layer of administrative burden

Tentative policy advice: Alternative 2 implemented through a directive

13

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Eksisterer "den internationale skatteret"?

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Eksisterer der "en international skatteret"?

"Professors like to joke on the first day of international tax class that "there's no such thing as international tax." Sadly, like most tax jokes, understanding it requires technical explanation and, even then, it is not funny. The joke relies on the observation that tax systems are creatures of national law. So, when we study "international tax" in U.S. law schools, we study how the United States taxes the foreign income of Americans, and we study how the United States taxes foreigners when they earn income in the United States. The implicit premise of the joke is that each state makes its tax law independently of other states. Increasingly, this joke is not only not funny; it is also not true."

Ruth Mason, American Journal of International Law, 2020, p. 353 ff.

"On balance, it seems most scholars accept that international tax law is a reality."

Jeroen Lammers, The Spirit of International Tax Law, 2023, p. 125

Aktuelle udfordringer

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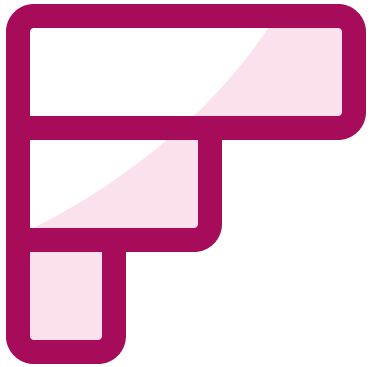

Hvori består de største aktuelle udfordringer for det internationale selskabsskattesystem?

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Hvordan løser vi bedst de aktuelle udfordringer, som det internationale selskabsskattesystem står over for?

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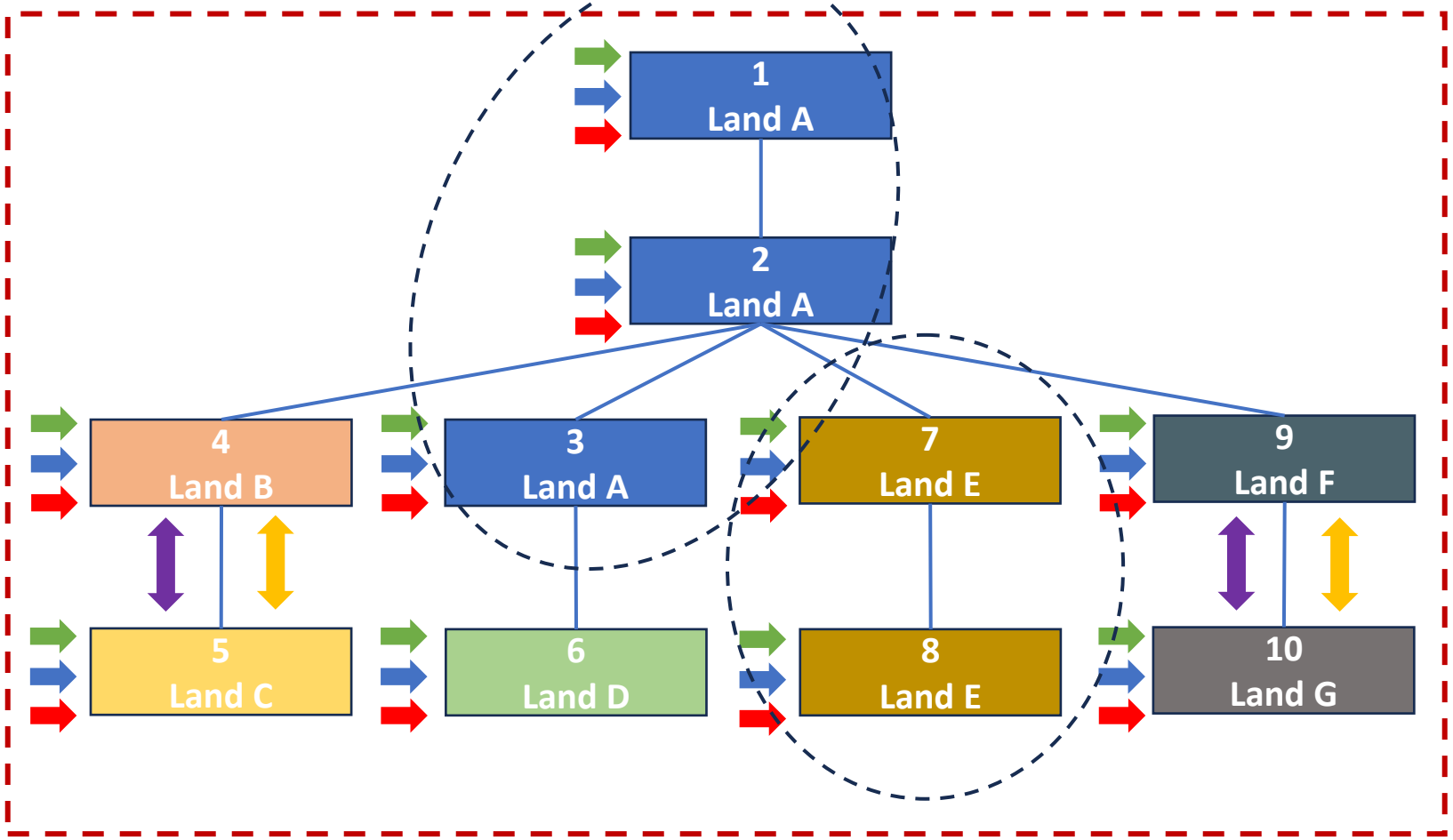
Den (måske) største udfordring

- "A deep structural flaw → The Seperate Enterprise-Arm's Lenght Principle
  - Sol Picciotto, i "Global Tax Fairness", 2016, p. 221 ff.



a) Almindelige nationale regler
b) Nationale transfer pricing-regler
c) Nationale værnsregler
d) Nationale sambeskatningsregler
e) Lempelse for dobbeltbeskatning
f) Evt. tvistløsning
g) Minimumsbeskatning (Pillar 2)

Den (måske) bedste løsning

1) Ophæve selskabsskatten
2) Lade systemet være som det er
3) Fortsætte med at "smøre på"
4) Forsøge at "sanere" trin for trin
5) Gøre noget helt andet (DBCFT mv.)
6) Indføre egentlig international koncernbeskatning
   - Fælles regler for opgørelse og konsolidering
   - Formelallokering

2011 → CCCTB

2016 → CCTB + CCCTB

2023 → BEFIT

- Skat udland, 2008(43), p. 95 ff.
- Revision & Regnskabsvæsen, 2011, nr. 7, p. 40 ff.
- Skat udland, 2017(83), p. 115 ff.

$$\text{Share A} = \left(\frac{1}{3}\frac{\text{Sales}^{A}}{\text{Sales}^{Group}} + \frac{1}{3}\left(\frac{1}{2}\frac{\text{Payroll}^{A}}{\text{Payroll}^{Group}} + \frac{1}{2}\frac{\text{No of employees}^{A}}{\text{No of employees}^{Group}}\right) + \frac{1}{3}\frac{\text{Assets}^{A}}{\text{Assets}^{Group}}\right) * \text{Con'd Tax Base}$$

" …de seneste års store begivenheder på den internationale skattescene kan have forbedret chancerne for, at Kommissionens harmoniserings-bestræbelser langt om længe kan lykkes."

Peter Koerver Schmidt, SR-skat, 2024, p. 7 ff.

Men, men, men… – Fremtidsudsigterne…

”Företagsbeskattningen är nära integrerad med andra delar av skatteområdet och med medlemsstaternas politiska och ekonomiska förhållanden. Utskottet anser att utformningen av företagsbeskattningen måste ske på ett sådant sätt att det finns ett utrymme för varje enskild medlemsstat att beakta de särskilda förutsättningar som avser den egna statens näringslivsstruktur. Utskottet delar därför regeringens bedömning att medlemsstaten initialt är mer lämpad att avgöra hur företagsbeskattningen och regelverk för beskattning av koncerner bör utformas.”

Sveriges Riksdag, Skatteutskottets utlåtande, 2023/2024:SkU17

”Regeringen er skeptisk over for forslaget i det nuværende udformning. Forslaget vurderes på det foreløbige grundlag at få negative statsfinansielle konsekvenser, idet selskabsskattebasen efter forslaget vurderes smallere end den nuværende danske, som ikke vil kunne opretholdes i forhold til de omfattede koncerner. Underskudsudligningen på tværs af lande bevirker, at underskud for koncerner kan udnyttes hurtigere og i højere grad, hvilket bidrager til omfordeling af provenu mellem de berørte lande, og samlet set et mindreprovenu pga. den højere udnyttelse…”

Regeringen, Grund- og nærhedsnotat, 17/1 2024, j.nr. 2022-15352

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Trænger du til en drink?

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CORIT ADVISORY

Peter Koerver Schmidt

Academic Advisor / Professor

TAK

CORIT ADVISORY P/S
LYNGBY HOVEDGADE 60, 1st floor
2800 KONGENS LYNGBY
DENMARK

WWW.CORIT-ADVISORY.COM

P: +45 23 63 85 88
E: pks@corit.dk