



THE CORIT TAX CLUB #4

4. februar 2025





- **Velkomst**
- **Aggressiv skatteplanlægning**
v. Jakob Bundgaard og Peter Koerver Schmidt
- **Præsentation af Demant**
v. Claus Bilberg Danielsen, Head of Group Tax
Stefan Funch-Jarlbæk, Head of Tax Projects & M&A
- **Snacks og netværksmulighed**



AGGRESSIV SKATTEPLANLÆGNING

A Nordic collaboration



**UNIVERSITY
OF TURKU**



**LUND
UNIVERSITY**

Henrik Skar, Reijo Knuutinen,
Peter Koerver Schmidt and Richard Croneberg*

*Interpretation and Application of General
Anti-Avoidance Rules after BEPS and ATAD:
Nordic Perspectives*

This article compares general measures against tax avoidance and the design of general anti-avoidance rules (GAARs) in Denmark, Finland, Norway, and Sweden. It focuses on aspects such as tax benefits, tax purposes, economic substance, and breaches of legislative purpose. The article also examines potential compliance issues between national GAARs, tax treaties, and the European Union's Anti-Tax Avoidance Directive (ATAD). The analysis highlights variations in how the national GAARs apply economic substance considerations and the level of pragmatism allowed when assessing conflicts with the purpose of the circumvented legislation. Additionally, it shows that differences in the wording of the GAARs, such as requirements related to tax purposes, do not necessarily result in practical differences due to other GAAR elements reducing or nullifying them. For similar reasons, the authors conclude that compliance issues between the national GAARs and the ATAD GAAR's requirements are unlikely, despite some differences in wording. Whilst focusing on the Nordic region, the article offers insights relevant to broader international contexts, as the diverse approaches, distinctions and issues identified mirror tax developments worldwide.

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Taking stock 50 years after



“The underlying legal conditions are similar in the different Nordic countries. Not only with respect to the tax regulation itself, but also, and this is of particular importance in this context, when it comes to the civil law regulation and the view of the relationship between civil law and tax law. At the same time, however, the Nordic countries show a number of differences when it comes to solving the avoidance problem.”

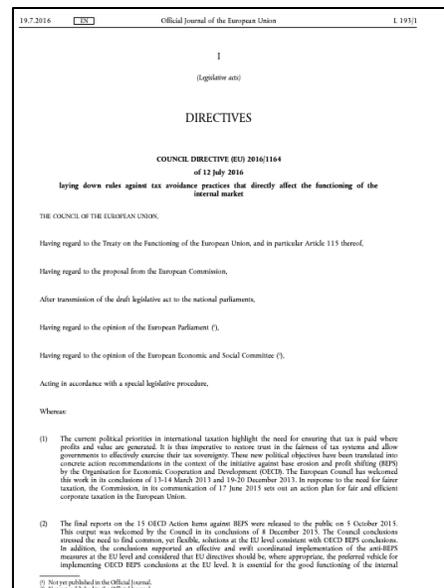
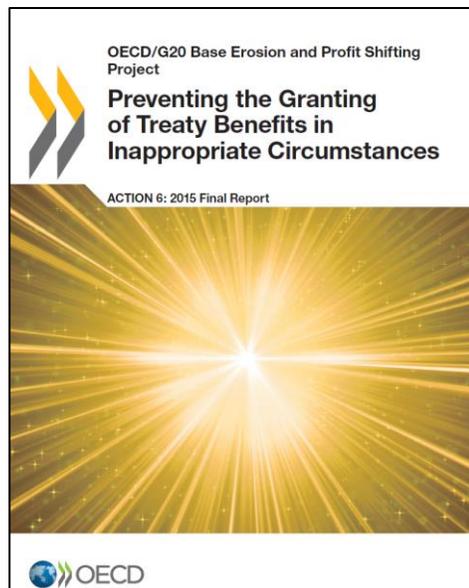
Gustaf Lindencrona, General Reporter at the 1975 annual seminar of the Nordic Tax Research Council

Approach / Method

- **The overall aim is:**
 - to conduct a comparative analysis of how the Nordic GAARs have developed and are applied today whilst also exploring their potential future trajectories in light of harmonization efforts through OECD initiatives and the ATAD...
 - with the objective of establishing how they resemble and deviate from each other, both in terms of underlying principles, formulation, specific conditions for application, and legal effects
- **The study relies on:**
 - the legal dogmatic traditions and interpretation standards of each country, and uses...
 - a functionalist comparative approach

Vastly different approaches

- Denmark and Norway have traditionally operated without formal GAARs, instead relying on court-developed doctrines, purposive interpretation or legal pragmatism to combat avoidance
- Finland and Sweden has had statutory GAARs in place for many years



New statutory GAAR



Nothing



Nothing



New statutory GAAR (none EU MS)

MAIN FINDINGS (1)

Tax benefit and motive/purpose test

- A common feature of GAARs is that they target tax benefits generated by the arrangement in question either by avoiding tax-increasing rules or by falling under tax-favourable rules
- All four Nordic GAARs share this characteristic, although the requirement is not equally explicit or delimited
- All four Nordic GAARs contain a motive test, i.e. a requirement that the purpose of the taxpayer's actions was to obtain a tax benefit, but several distinctions appear



Tax advantage	Yes	Yes ("Significant")	Yes	Yes
Motive/purpose test	<p>Yes</p> <p>The tax benefit must be the obvious 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.</p>	<p>Yes</p> <p>The tax benefit must be the predominant 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.</p>	<p>Yes</p> <p>The tax benefit must be one of the main purposes. Additionally, the GAAR stipulates that the arrangement 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.</p>	<p>Yes</p> <p>The arrangement must demonstrate that its "main purpose" is to save tax (entry condition). Yet, non-tax purposes that are secondary to the tax purpose, can potentially protect the taxpayer, in the comprehensive assesment of whether the arrangement constitutes a non-recognizable avoidance scheme.</p>
Objective or subjective motive/purpose test?	<p>Both</p> <p>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.</p>	<p>Objective</p> <p>based on external factors related to the transaction.</p>	<p>Both</p> <p>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.</p>	<p>Objective</p> <p>Based on how a rational actor would reason in the same situation.</p>

MAIN FINDINGS (2)

Substance over form argumentation

- The potential conflict between an arrangement's legal form and its economic substance is central to many GAARs
- Such GAARs typically involve assessing whether an arrangement lacks substance or non-tax effects, either by making minimal changes to the original situation or by replicating the substance of another form or transaction that would not have resulted in the tax benefit
- These types of assessments are crucial under the Norwegian, Danish, and Finnish GAARs, whereas the Swedish GAAR demands that the arrangement is assessed on its legal (private law) merits



<p>Substance over form argumentation</p>	<p>Application necessitates that the form does not align with the transaction's true nature or objective.</p>	<p>Not recognized under the GAAR.</p>	<p>Transaction must not be genuine, when emphasising commercial reasons and economic reality.</p>	<p>Important to demonstrate that the transaction lack non-tax substance/effects, or that the effects mimics another form that would not result in the tax benefit.</p>
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MAIN FINDINGS (3)

Defeating legislative purpose – Who can apply?

- All the statutory Nordic GAARs place emphasis on whether the tax advantage obtained through a given arrangement somehow defeats the object or purpose of a particular tax provision or the tax legislation as such
- However, the methods employed for this assessment varies, and there are differing opinions and general confusion as to how this assessment should be conducted
- The legislator's passiveness or knowledge about the avoidance opportunity may play a role, however the role is probably more limited in a Norwegian context
- The legal consequence in all four countries is recharacterization, but differences in who can apply



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.	Only applicable if the tax benefit defeats the object and purpose of the tax legislation.	Relevant to demonstrate a conflict with the purpose of the circumvented tax legislation, but it is framed as an important factor in the comprehensive assessment, rather than as a strict requirement.
Who can apply the GAAR?	Ordinary tax authorities.	Tax authorities must bring the case before the Swedish Administrative Court.	Tax authorities must bring the case before the National Tax Council.	Ordinary tax authorities.

MAIN FINDINGS (4)

Compliance with EU law requirements – Striking the right balance

- Despite sovereign MS competence within direct tax matters it must be exercised in line with EU/EEA law, including the four fundamental principles → But prohibition of abuse of law is a CJEU-developed principle relevant within all areas of law
- ATAD is a minimum directive → MS may implement stricter rules, as long as they are in line with EU primary law (i.e. not treating similar cross-border issues more harshly than internal ones unless...)



<p>Compliance issues with ATAD?</p>	<p>There is a risk of a compliance issue because the Finnish GAAR appears to impose stricter requirements regarding the tax purpose for its application than the ATAD GAAR. However, most likely this does not result in a compliance issue, due to the ATAD GAAR's additional requirement that the arrangement must be non-genuine, which brings the actual thresholds closer together.</p>	<p>There is a risk of a compliance issue because the Swedish GAAR apparently imposes stricter requirements regarding tax purpose for its application than the ATAD GAAR. However, most likely this does not result in a compliance issue, due to the ATAD GAAR's additional requirement that the arrangement must be non-genuine, which brings the actual thresholds closer together.</p>	<p>No compliance issues arise as Denmark has incorporated the ATAD GAAR directly into its domestic legislation.</p>	<p>Norway is not a member of the EU and is therefore not bound by the ATAD.</p>
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Interaction with tax treaties

- Are application of national GAARs allowed in tax treaty situations?
- Existing (but scarce) case law and literature suggest that the answer is yes in all four countries, at least if the treaty does not contain a GAAR itself
- But what if the treaty does include a GAAR (e.g. a so-called PPT)?



<p>Is the GAAR applicable to treaty benefits?</p>	<p>If a treaty lacks a GAAR, it is generally assumed that the national GAAR can be applied. For treaties that include a GAAR, such as the PPT, the treaty GAAR is applied directly.</p>	<p>If a treaty lacks a GAAR, it is generally assumed that the national GAAR can be applied. For treaties that include a GAAR, such as the PPT (and this has been ratified), the treaty GAAR is applied directly.</p>	<p>Based on statements in the preparatory works to the statutory GAAR, it is assumed that it can be applied to treaty benefits both where the tax treaty lacks a GAAR and where it includes a GAAR, such as the PPT. This implies that the domestic GAAR takes precedence over the PPT.</p>	<p>If a treaty lacks a GAAR, it is generally assumed that the national GAAR can be applied. For treaties that include a GAAR, such as the PPT, the treaty GAAR is applied directly.</p>
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Looking ahead

- The Nordic countries have come closer together in their general approaches to tax avoidance
- The adoption of statutory GAARs across all four countries, along with Denmark, Finland, and Sweden adhering to the ATAD requirements, means that the starting point for discussions and issues of interpretation has become more aligned
- Integrating EU jurisprudence and interpretations of the ATAD will further support this interplay
- However, the harmonization process will not happen overnight
- Still, it would be misleading to say that the four Nordic countries are moving towards one unified approach
 - ATAD only sets minimum requirements, in principle allowing for more extensive national GAARs
 - Norway's position outside the EU, meaning that the ATAD does not apply
 - Distinct legal traditions

PAUSE

Demant



CORIT Tax Club



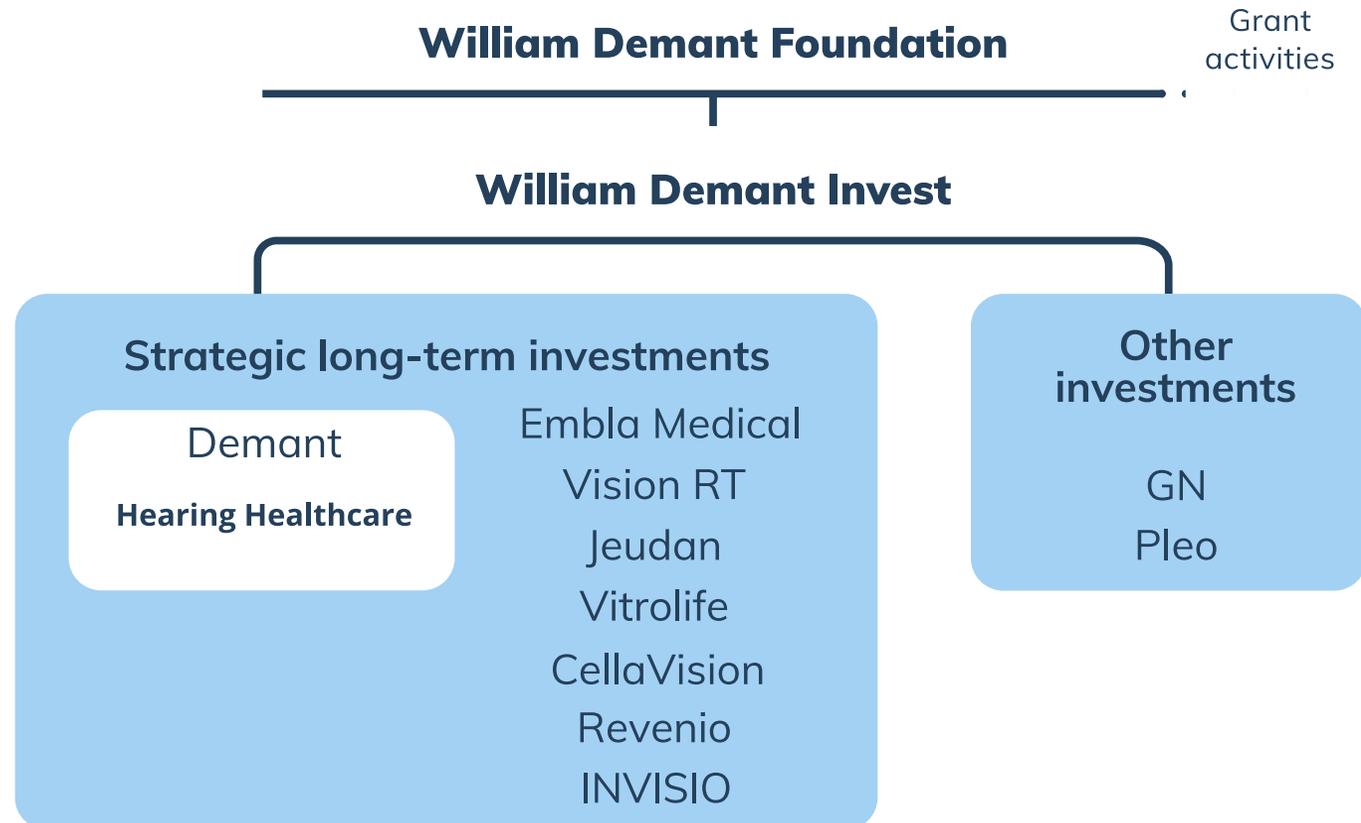
Agenda

- Introduction to Demant
- Impact of Trump's Tax Policies
- Mergers & Acquisitions at Demant

Intro to Demant



Unique ownership structure



➤ Ownership structure ensures balance between long-term focus and short-term requirements by the stock market

➤ The charter of the Foundation ensures long-term ownership

➤ William Demant Foundation granted DKK 135m to more than 2,600 projects in 2023

Demant Group

Global hearing healthcare group

Demant has three main business areas and owns multiple individual brands in the hearing healthcare industry

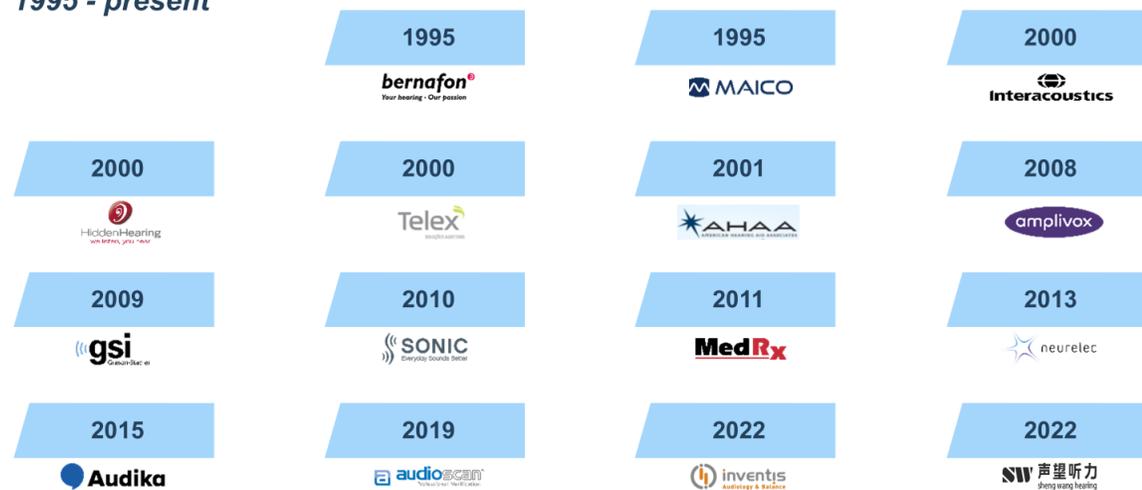


Demant

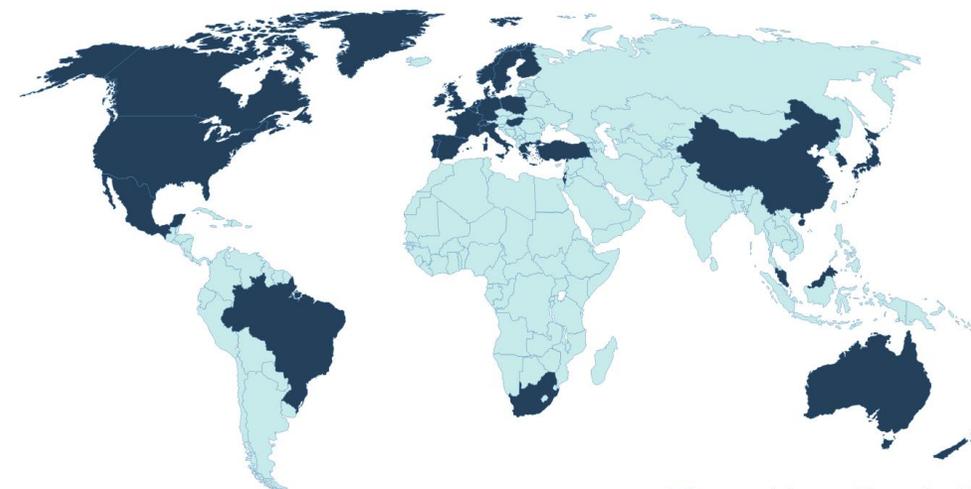
Truly a global hearing healthcare group

Major acquisitions

1995 - present



Demant

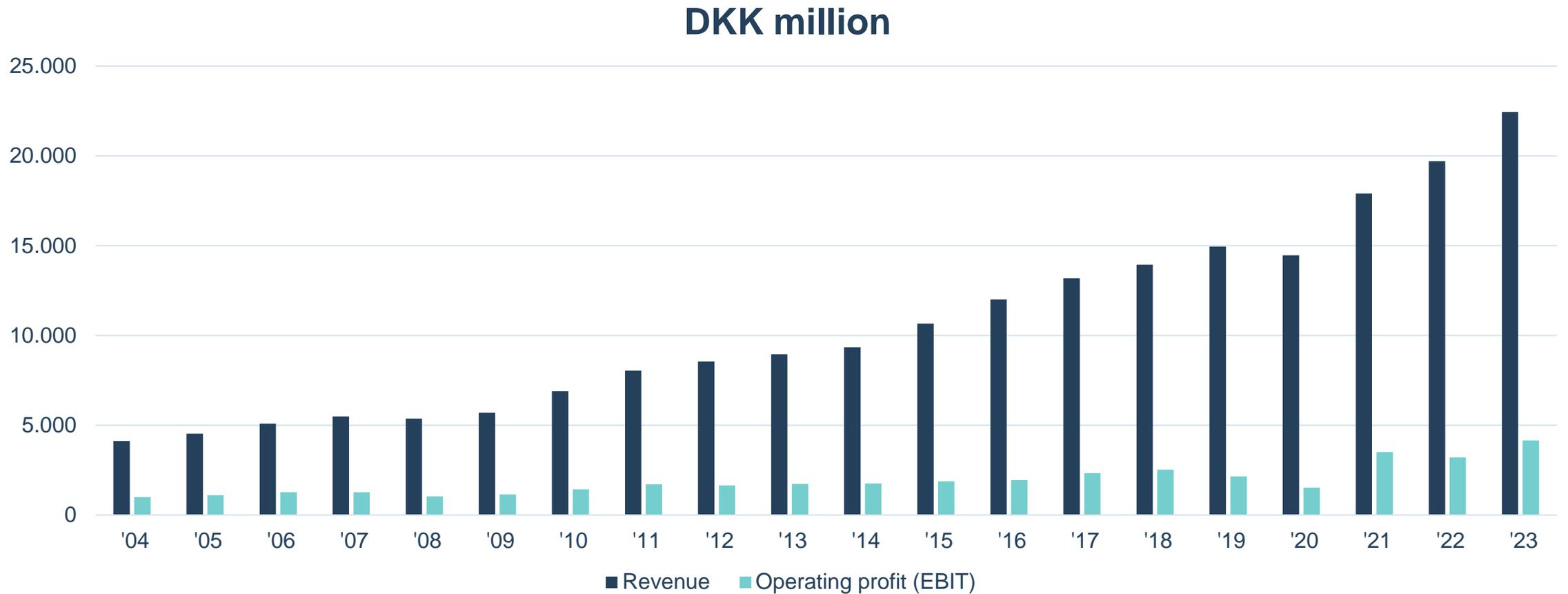


+30 countries with subsidiaries
Our products are sold in more than 130 countries

Total number of employees: more than 21,000
Revenue in 2023: DKK 22,443 million
Operating profit in 2023: DKK 4,148 million
Presence: over 130 countries
Gender diversity all managers: 47% women and 53% men
CO2 emission reductions by 2030: approximately 46%

Demant

20 years: revenue and operating profit



Group Tax

What is the framework for Group Tax



Global responsibility for corporate tax in Demant



Safeguard an optimal effective tax rate for Demant



Ensure a satisfactory level of compliance globally

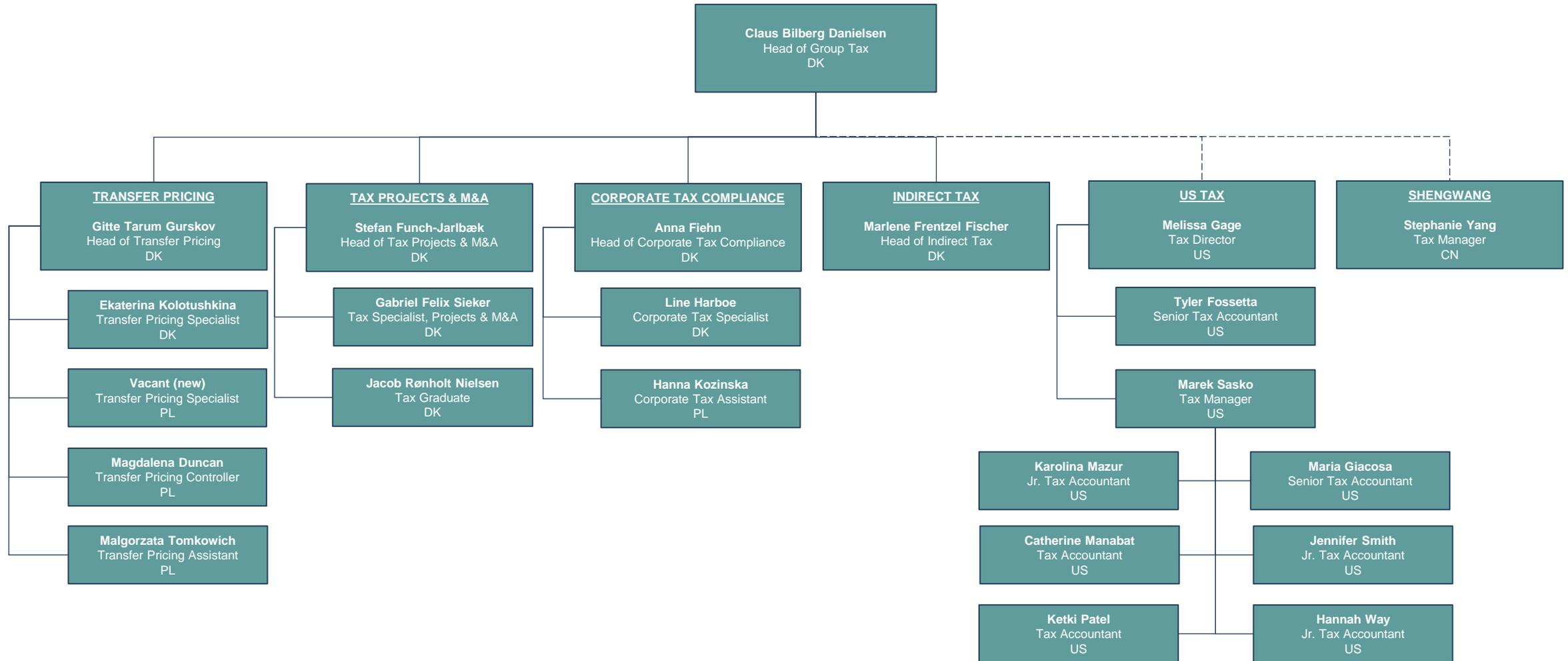


Ensure that tax is a part of commercial decisions

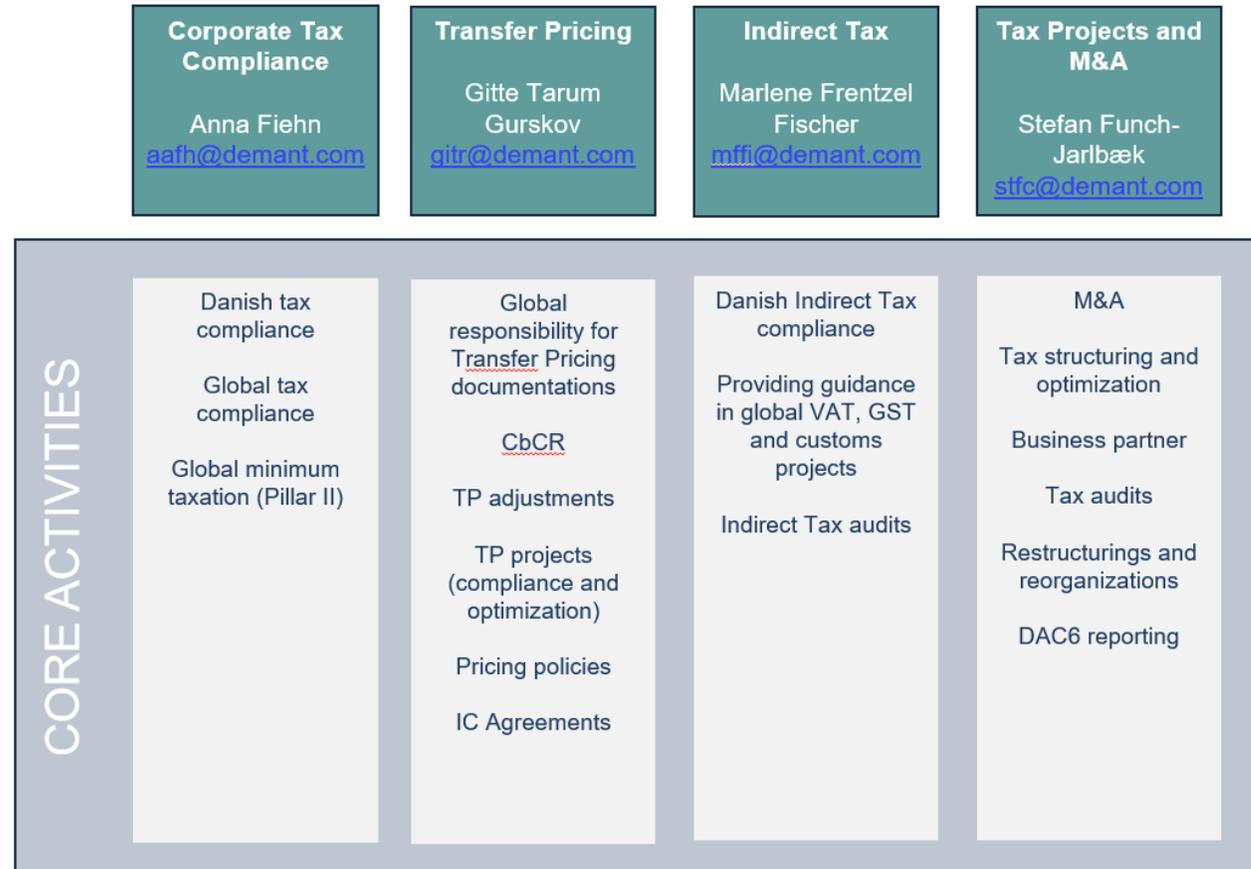


Global tax risk management for Demant

Group Tax - Global



Group Tax organization and responsibilities





Demant Group Tax Policy

Version 4.0 20 December 2024

Demant

Introduction

Established in 1904 out of a desire to help people with a hearing loss, Demant's positive contribution to a healthy society has always driven the business, and every day, Demant employees strive to create life-changing differences through hearing health.

This document outlines the Tax Policy for the Demant Group and describes our governing principles for tax management. Our Tax Policy applies globally, and it is mandatory for management and employees in the companies belonging to the Demant Group to comply with this policy.

Demant is, and always has been, a responsible company. The overall aim of this Tax Policy is to ensure that we are tax compliant and that we abide by domestic and international tax legislation, while securing a competitive tax rate for the Demant Group.

Commercially driven tax approach

Our business structures are based on commercial considerations and hence business substance. We do not set up artificial structures to avoid taxes. Demant pays taxes where value is generated according to OECD principles and complies with domestic and international tax legislation.

We welcome and make use of tax incentives offered in the jurisdictions where we operate, e.g. increased R&D deductions in Denmark. Such incentives

help support our business activities and enable us to continue to create life-changing differences for our many customers and users.

As a global company, we trade products and services across borders within the Demant Group. Such cross-border transactions are subject to transfer pricing regulations. Transfer pricing regulations aim to ensure a fair split of corporate tax revenue between jurisdictions. Demant complies with the implemented OECD principles on transfer pricing and with local requirements if they deviate from the OECD standard.

Responsible tax approach

Demant is committed to managing taxes in a responsible way. We do not use artificial structures to reduce our tax payments, nor do we have operational companies in jurisdictions listed by the EU as non-cooperative tax jurisdictions (tax havens).

Demant aims to be tax compliant, while seeking to obtain a competitive tax rate for the Demant Group. Demant will not make decisions in tax matters, unless we feel comfortable that the decisions made can be defended if challenged by a tax authority.

Please refer to the Demant Sustainability Report for an elaboration on how the Demant Group's responsible business practices contribute directly or indirectly to the Sustainable Development Goals.

Transparency and cooperation with tax authorities

Built on trust and transparency, Demant engages in a professional and cooperative relationship with local tax authorities. We disclose all required information to the tax authorities, including annual Country-by-Country reporting, which provides information about taxes paid at country level. We reply to any enquiries from the tax authorities in a timely and open manner. Where a common understanding cannot be reached, Demant will consider escalating the matter to a relevant court to avoid double taxation.

Tax risk management

Demant's tax risk management is based on a two-tier system. On a quarterly basis, local management reports on identified local tax risks and risks related to Demant's global operations, and the business model is evaluated. The information is consolidated, risks are assessed and analysed by Group Tax, and actions are planned on how to mitigate and prevent identified tax risks in the most efficient manner.

We monitor new legislation and regulatory developments on an ongoing basis to assess the impact on the Demant Group.

Responsibility for tax governance

Demant's board of directors is overall responsible for Demant's Tax Policy. The board has delegated the responsibility to the vice chairman.

Group Tax is responsible for the implementation of the Tax Policy and the day-to-day management of taxes in the Demant Group.

Group Tax reports to the Tax Board on a quarterly basis. Members of the Tax Board are the vice chairman of the board of directors, a member of the Executive Board, the SVP of Finance and the Head of Group Tax.

Local management is to a great extent responsible for ensuring compliance with local tax legislation and for implementing the principles of this Tax Policy locally. In case of non-routine questions about for instance transfer pricing, tax audits or tax litigation, Group Tax must be consulted.

The Tax Policy is reviewed on an annual basis by the board of directors, and potential issues or risks addressed during a year are reported in Demant's annual Sustainability Report, which is part of our UN Global Compact Communication on Progress report.

Tax Graduate program

 **Jacob** (Tax Graduate)

Tax Compliance → Transfer Pricing → Abroad → TBD

The diagram shows a horizontal flow of four stages: Tax Compliance, Transfer Pricing, Abroad, and TBD. Each stage is represented by a chevron pointing right. The 'Abroad' stage is highlighted with a grey background and a blue airplane icon. A yellow star is positioned below the 'Tax Compliance' stage.

- 2-year program
- Internal rotation in Group tax, but also possible to explore other parts of the business
- Fully included in the overall Demant Graduate program

Demant

Trump Tax impact



What was “tweeted” by President Trump



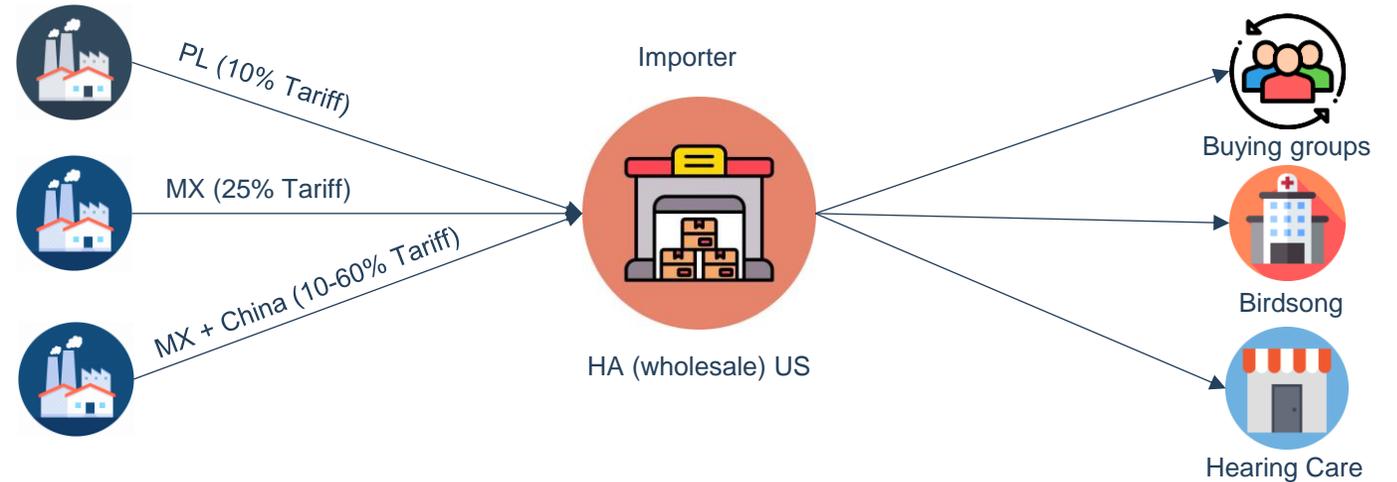
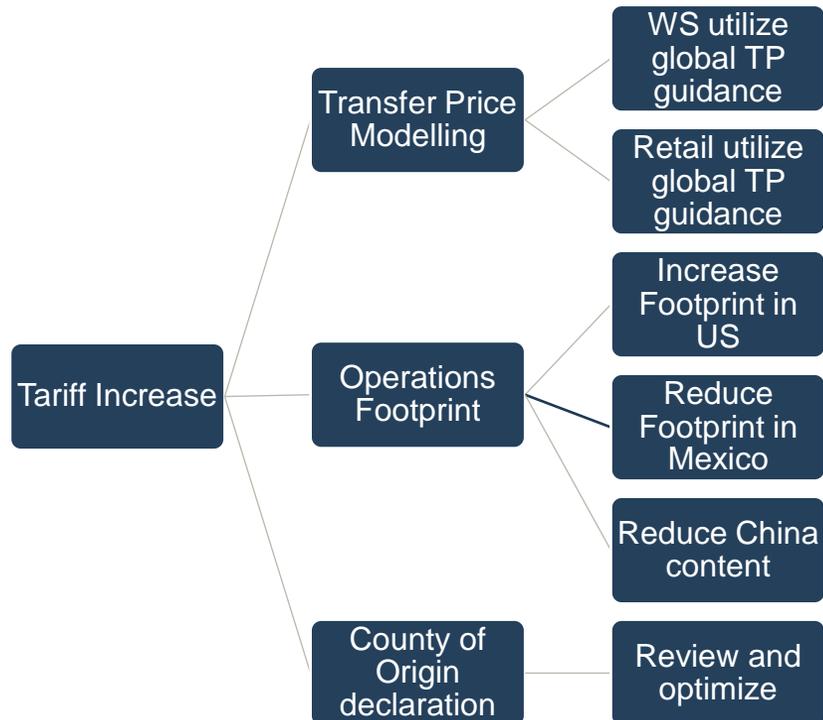
Donald J. Trump ✓
@realDonaldTrump

As everyone is aware, thousands of people are pouring through Mexico and Canada, bringing Crime and Drugs at levels never seen before. Right now a Caravan coming from Mexico, composed of thousands of people, seems to be unstoppable in its quest to come through our currently Open Border. On January 20th, as one of my many first Executive Orders, I will sign all necessary documents to charge Mexico and Canada a 25% Tariff on ALL products coming into the United States, and its ridiculous Open Borders. This Tariff will remain in effect until such time as Drugs, in particular Fentanyl, and all Illegal Aliens stop this Invasion of our Country! Both Mexico and Canada have the absolute right and power to easily solve this long simmering problem. We hereby demand that they use this power, and until such time that they do, it is time for them to pay a very big price!

11,5k Reposts 46,1k Likes

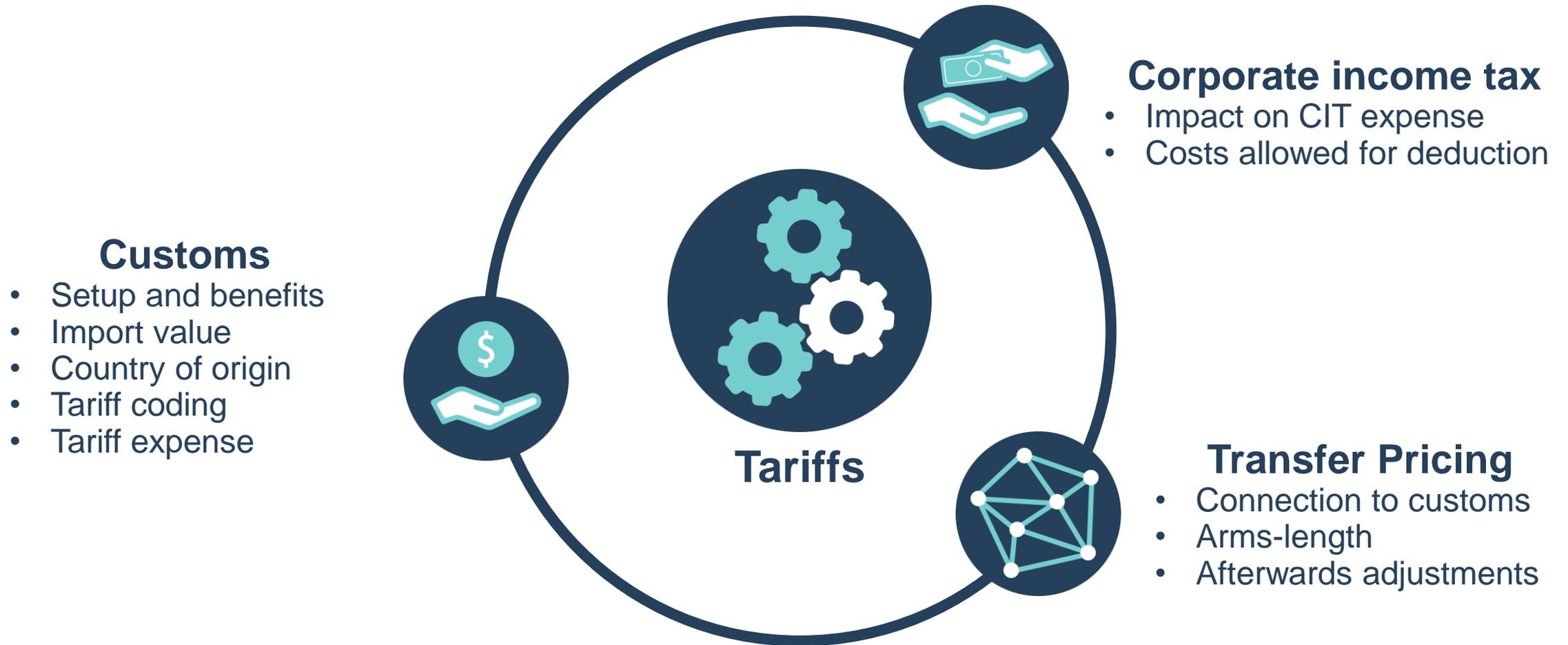
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Contingency plan and high-level impact



360-degree tax implications

Various tax legislation gets closely linked together



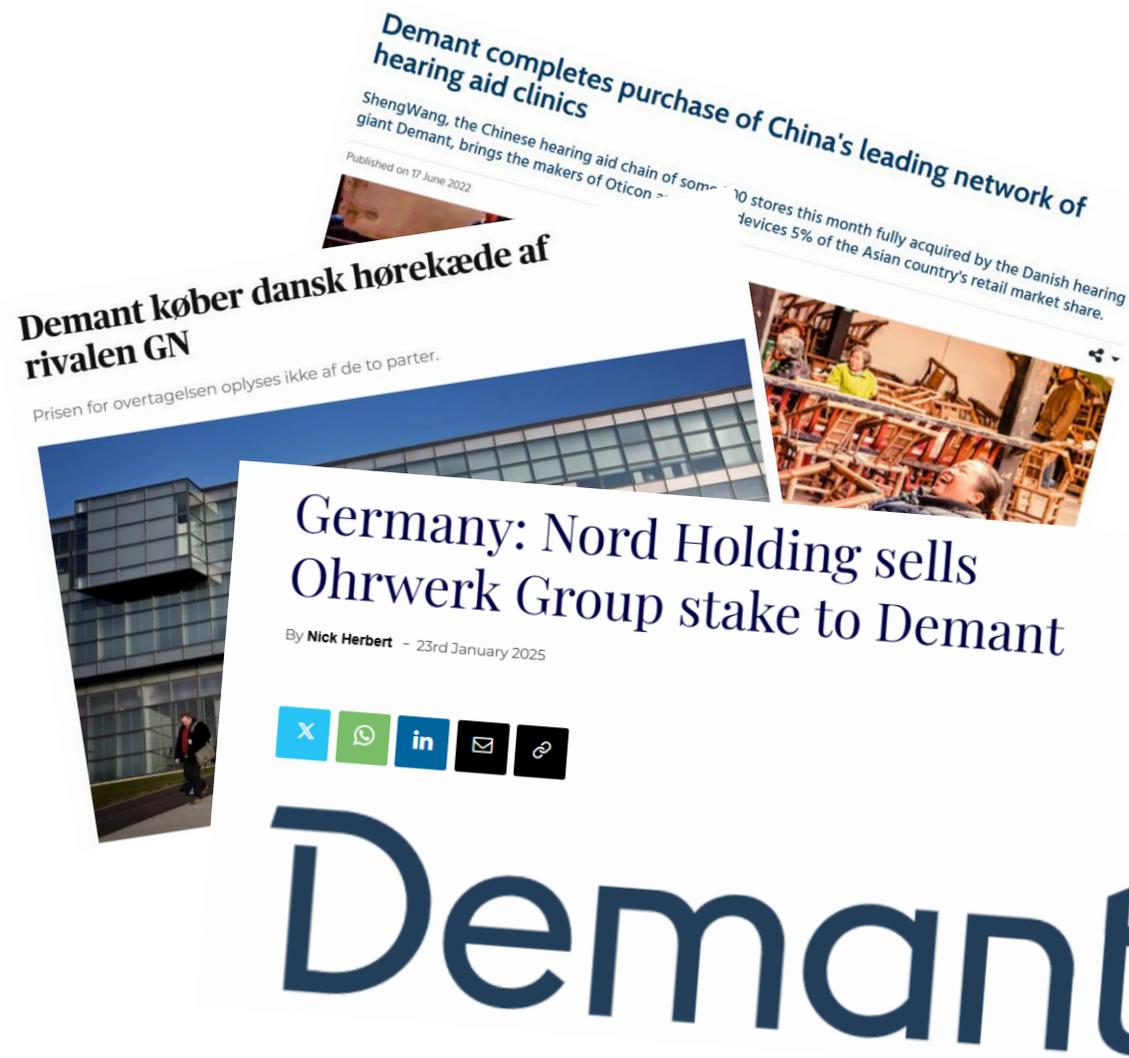
Zoom in on M&A



Mergers & Acquisitions at Demant

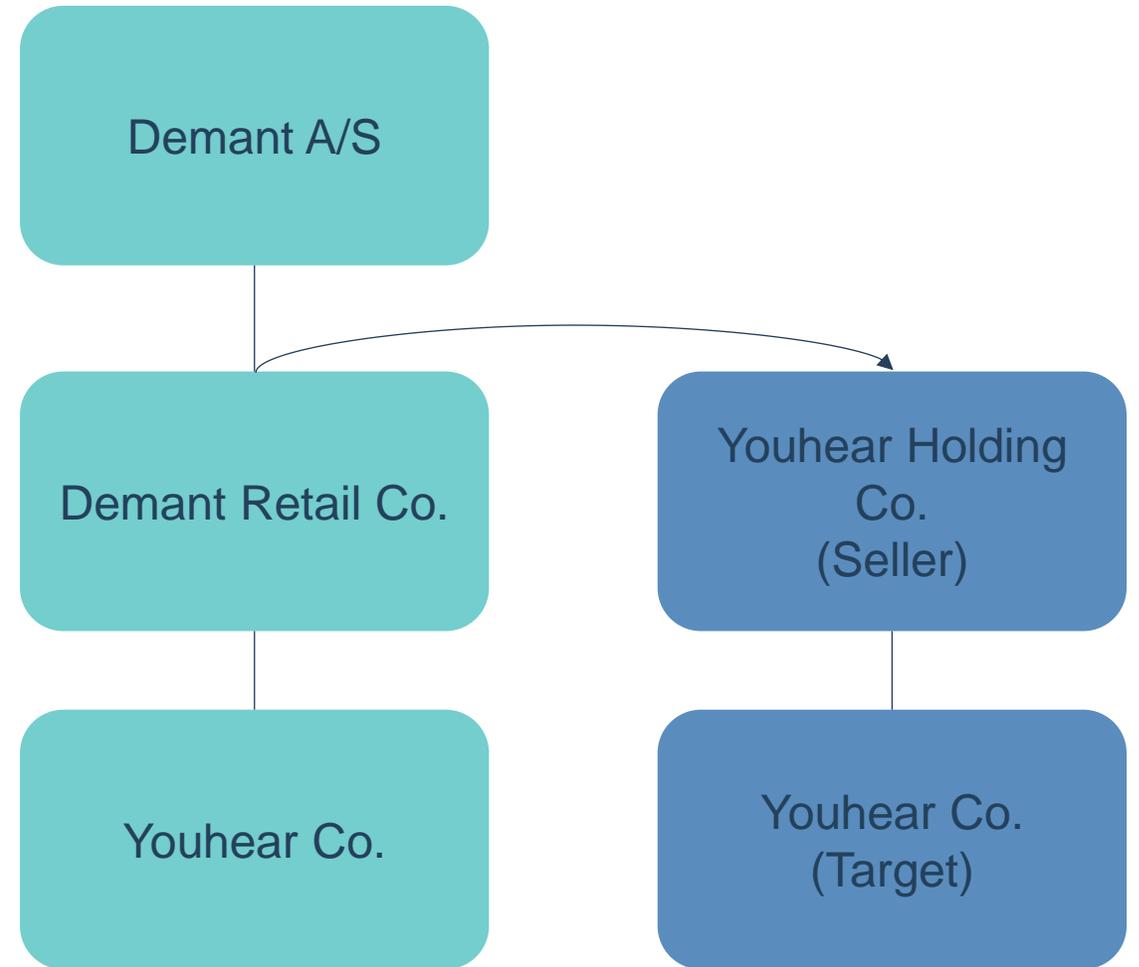
Notable acquisitions

- Shengwang:
 - Has more than 1,300 employees and runs the leading network of hearing aid clinics in China
- Dansk Hørecenter:
 - A Danish chain of hearing care clinics covering all regions in Denmark. With the acquisition, Demant doubles its footprint of fully owned shops in Denmark
- Ohrwerk:
 - A German audiology group consisting of more than 78 shops previously owned by a private equity fund – largely increasing Demants presence and market share in Germany



Share deal

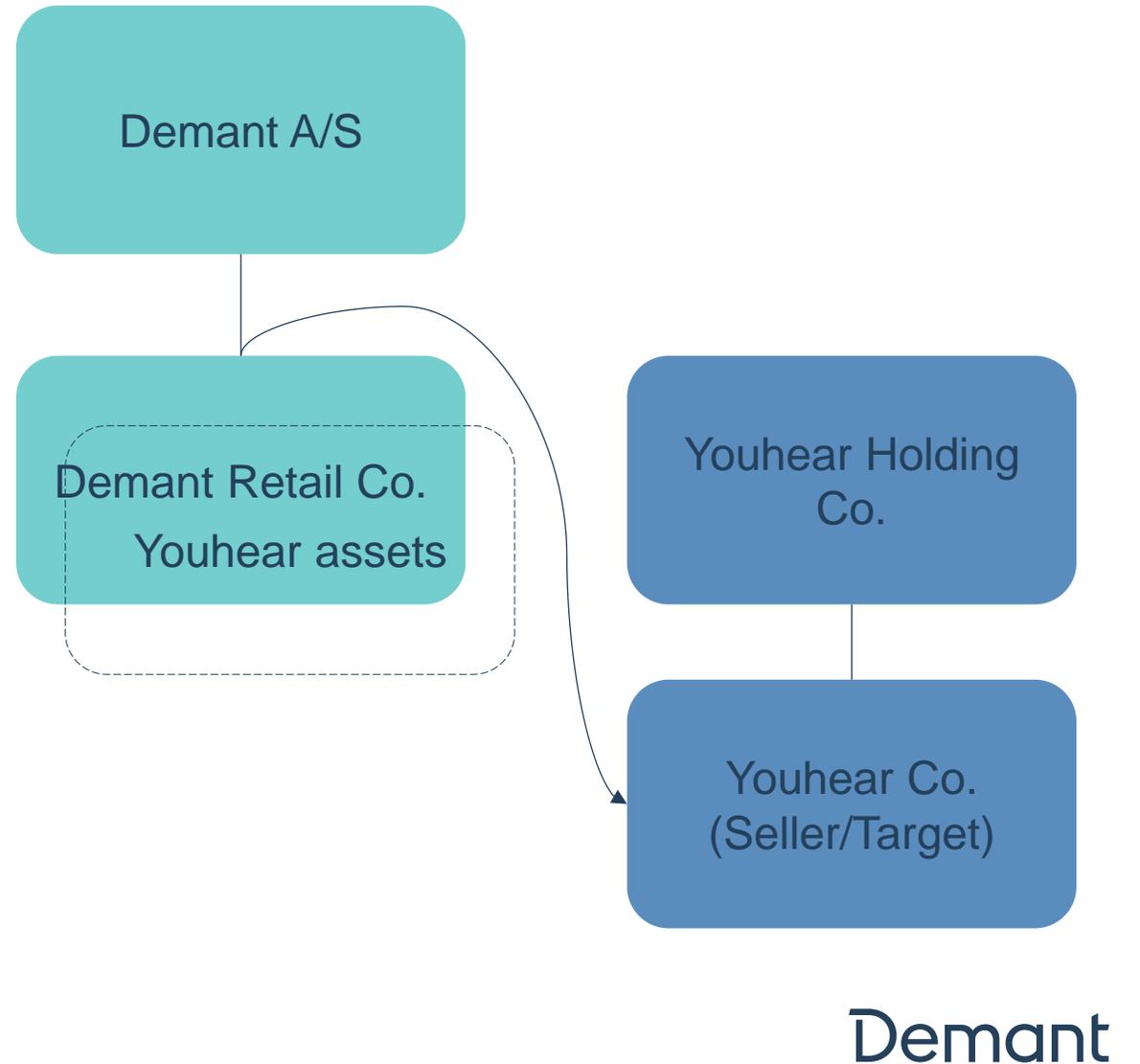
- Structuring
- Funding
- Due Diligence
- SPA review
- Closing
- Integration



Demant

Asset deal

- Structuring
- Funding
- ~~Due Diligence~~
- APA review
- Closing
- Integration



Mergers & Acquisitions at Demant

Our approach to transactions

- We look for optimizations that are within the confines of the applicable law and most importantly within the Demant Tax Policy
- We prefer asset deals when possible
- We ensure that we have adequate protection towards risks from previous years

