



FAGLIGT NETVÆRK

10. december 2025



Året der gik og året der kommer

- Overblik over udviklingen i det globale handelspolitiske landskab og koblingen til skat
- Væsentlige afgørelser og verserende sager i dansk og international retspraksis
- Væsentlige tiltag fra internationale organer som OECD, EU og FN
- Konkrete emner som også kommer til at optage os i 2026

Året har budt på massive globale bevægelser

Post BEPS-æraen viser revner i globaliseringsromantikken og skatternes indtog på den geopolitiske arena

- Skift i fokus mod handels- og geopolitik
- Gengældelse og konkurrencedygtighed
- Forøgede toldsatser – i historisk kontekst måske ikke så meget nyt under solen
- Det internationale prestigeprojekt
 - Pillar 1 bliver dog ikke til noget, og USA har entydigt trukket sig fra hele aftalen
 - Pillar 2: USA skal fritages – Side by Side agreement – Risiko for at IRC sec. 899 kommer retur, hvis der ikke sker noget inden indgangen til 2026

- Handelsmæssige ubalancer
 - USA – America First Trade Policy – Trump 2.0.
- Det globale syds utilfredshed – magt og markedsbeskatning
- Forum-kampen: OECD vs. FN
 - Seneste vidtrækkende udvikling: UN Draft Framework Convention Template (24 October 2025):
 - *"Article 4 Fair Allocation of Taxing Rights*
 - *The States Parties agree that every jurisdiction where a taxpayer conducts business activities, including jurisdictions where value is created are located and revenues are generated, have a right to tax the income generated from such business activities."*
- Udfordringen ved digitale forretningsmodeller
- Hvad med klimaet og den grønne omstilling?
- Markedsforstyrrelser og dermed windfall profits
- Stigende tendens til principielle søgsmål

Hvor efterlader udviklingen EU?

Hvor efterlader udviklingen Danmark?

Hvordan kan virksomhederne bedst navigere i dette komplicerede landskab?

Væsentlige afgørelser og verserende sager i dansk og international retspraksis

Danske sager

- Nylige kendelser om ADR
 - Hvem er aktionær (beskatning, tilbagesøgning)?

EU-sager

- Pillar II – døden nær?
 - Shipping undtagelsen for snæver? C-146/24 *P Fugro*
 - UTPR i strid med EU-retten? C-519/25 *American Free Enterprise Chamber of Commerce (pending)*
- ATAD – døden nær?
 - Case C-524/23 *European Commission v Belgium (pending)*
- Misbrug/omgåelse - Sag C-228/24 *Nordcurrent* og C-585/22 *X BV*
 - Noget nyt i misbrugsvurderingen?
- Kildeskatter og underskud – senest C-601/23 *Credit Suisse UK*
 - Kan kildeskatter tilbagesøges, hvis man er ikke-hjemmehørende og har underskud?

Væsentlige tiltag fra internationale organer som OECD, UN og EU

OECD

- Pillar II (side-by-side, permanent safe harbours, tax credits)
 - Permanent safe harbours og forudsigelighed før midlertidige udløber
 - US deadline på side-by-side er 31.12.2025....og forventer retroaktiv effekt
- OECD MC bl.a. home office update og natural resources
 - Opdaterede kommentarer

UN MC

- Draft med væsentlige ændringer

EU

- Droppede initiativer: ATAD 3 (Unshell), DEBRA (gæld/egenkapital), Transfer Pricing, Financial Transfer Tax
 - BEFIT (CCCTB) er ikke taget af bordet endnu
- Tax Omnibus forventes i Q2 i 2026
 - Umiddelbart mest ATAD (EBITDA-reglen og hybrider) samt DAC forenklinger
 - Tør man håbe på mere, eksempelvis rente-/royaltydirektivet m.v.

OECD MC: Home office update

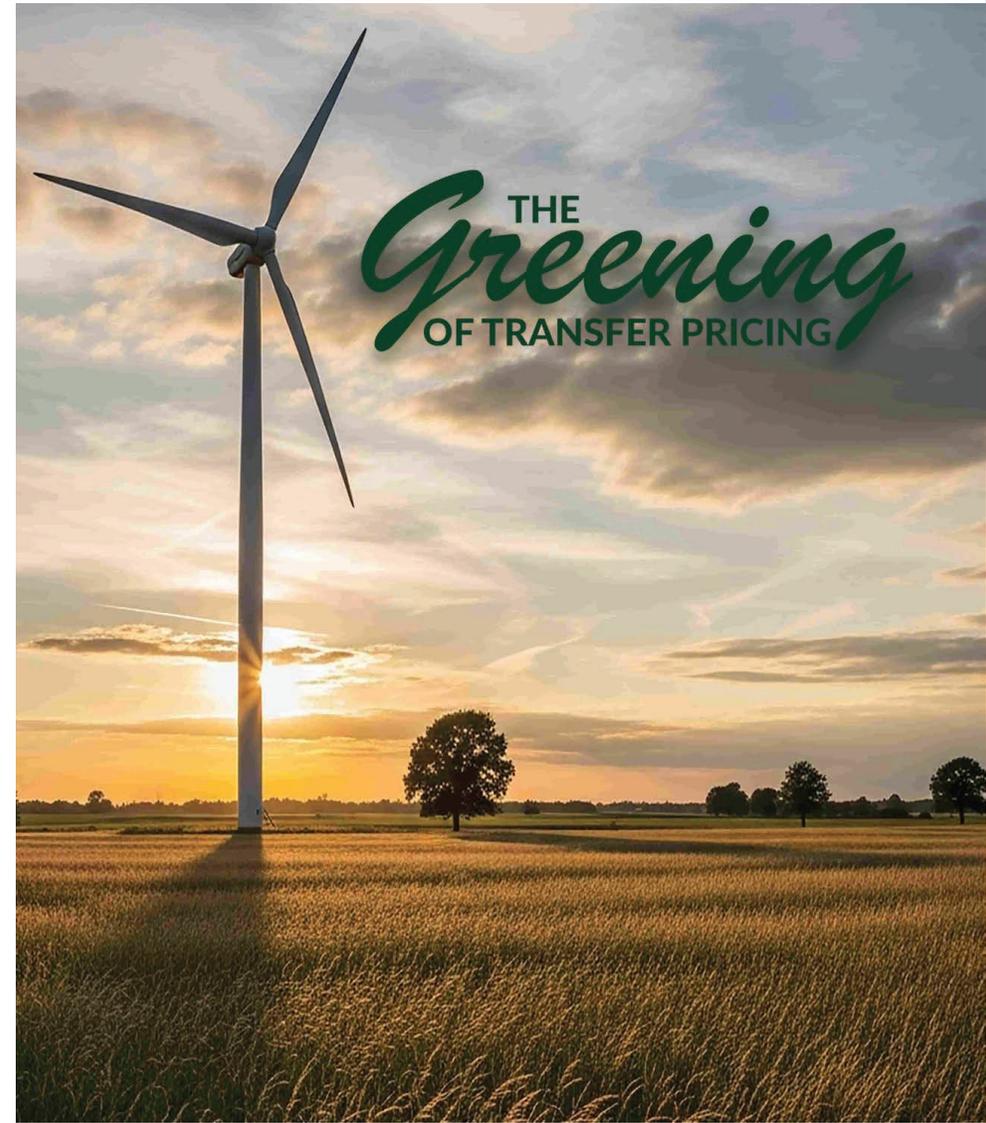
- An individual may have a home or another location in another country, e.g. a second home, holiday rental, or the home of a friend or a relative. The place of work is not related to a company and are not accessible to other employees and are under (greater) control of the individual
- In most cases, remote work from another country will not trigger a PE.
 - If an employee works from home or another non-company location for less than 50% of their total working time in a 12-month period, this generally will not create a fixed place of business for the company
 - Even if the 50% threshold is exceeded, a permanent establishment is not automatically triggered; it must also be shown that the employee's activities at that location are of a commercial nature/reason
 - Does the individual directly engage with customers, suppliers etc. in that state?
 - Personal purpose?

KONKRETE EMNER FOR 2026

- IP continues to be on top of the agenda in 2025 and 2026
- Expected to continue as battlefield for the future
 - IP found everywhere
 - Post PepsiCo challenges?
- Typical practical issues
 - Centralization of IP and other business restructurings
 - Mitigating exit taxation (profit potential)
 - Securing step up in value and amortization of IP
 - Claiming local co-development and ownership of IP
 - Valuation
- Key considerations
 - Typically highly valuable – drives entrepreneur status and higher remuneration (once profitable otherwise losses borne)
 - Complexity and hard to value
 - Interaction with corporate tax law, accounting etc. – sloppyness can be costly
 - Delineating a right to use from ownership (royalties from disposal/acquisition) of IP
 - Mischaracterized IP (embedded IP/royalites)

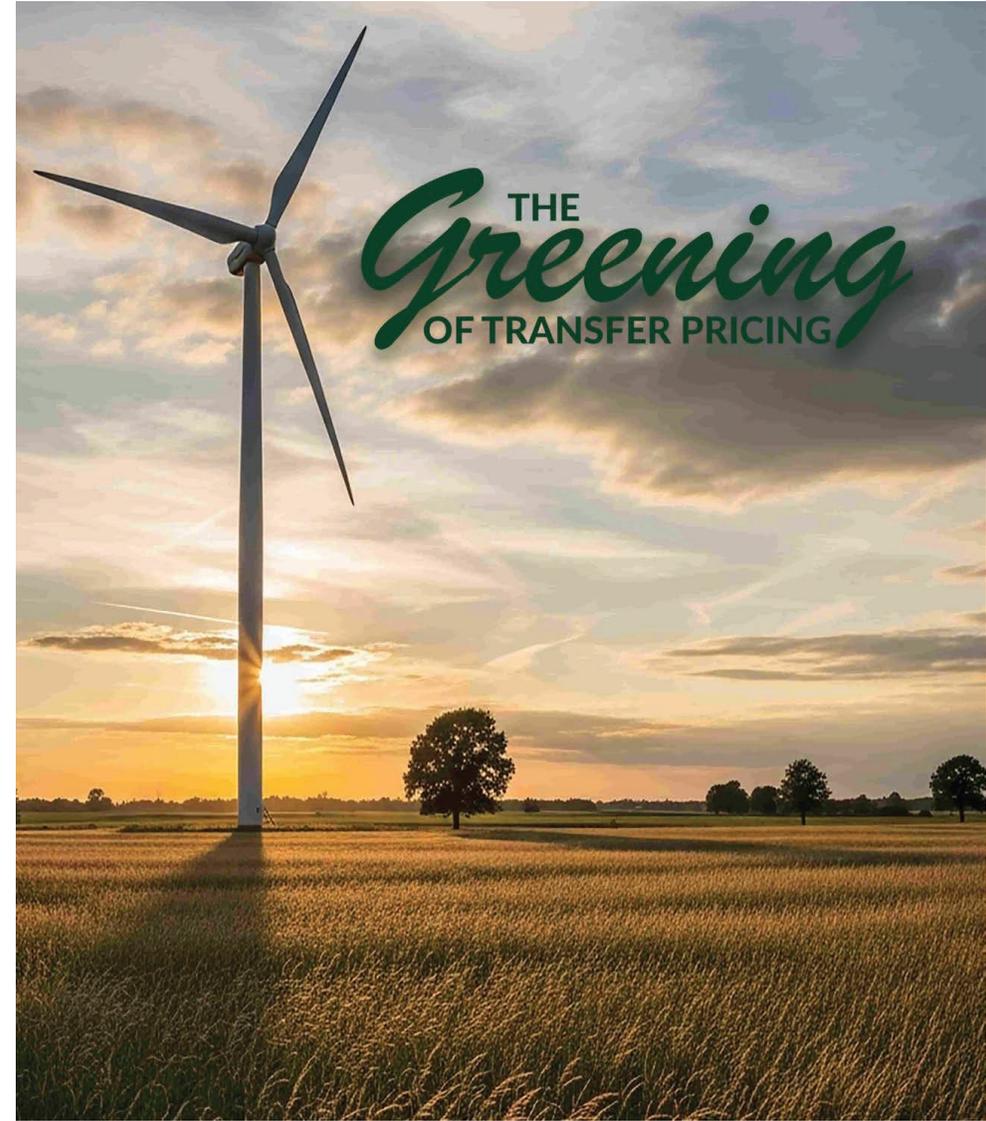
Recent CORIT article: why transfer pricing in renewables is uniquely challenging: long project cycles, high capital needs, and real market volatility

- Renewables attract extra scrutiny from tax authorities
- Key is a genuine functions, assets and risks (FAR) analysis at every stage: development, construction, operation, decommissioning
- Both tangible assets (infrastructure) and intangibles (know-how, licences, but also location, market conditions, state aid, access to sun and wind) drive value and must be recognised
- Early-stage costs often sit with the parent, but if these create value for the SPV, they need to be compensated at arm's length



Despite severe concerns we recommend a balanced, fact-based approach. Recognizing all value drivers and actual contributions is essential – there's no universal template

- Best practice means:
 - Classifying and remunerating knowledge and intangibles clearly: routine vs. unique, service vs. right to use
 - Documenting what boards actually do, especially when SPVs have few or no staff
 - Pricing performance guarantees and financial support properly – often using insurance logic
 - Recognising the value of tangible assets and location, not just functions and intangibles – especially if there are no or very few significant people functions!
- Avoid extremes



TAK FOR I DAG