# THE CORIT POINT OF VIEW

Volume 8 December 2019




## Editorial

Dear reader,

Welcome to the 2019 edition of The CORIT Point of View. For the newcomers, this publication is not a newsletter in its traditional sense, but contains technical and academic information produced in the past year as well as other information about the many activities of CORIT.

The ambition of The CORIT Point of View – or CPOW as we call it our-selves – is to keep you informed on recent and future activities by provid-ing 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. The content is made available on an ongoing basis via our webpage with the kind con-sent of our publishers. Visit www.corit-advisory.com and our LinkedIn group CORIT Advisory to explore the sources. Producing and communicating research-based knowledge is deeply rooted in our corporate values.

Once again let's take a glance at the current international tax landscape and the most recent developments.

On the international scene we continue to see that tax matters are increasingly moving up the public agenda. Responsible behavior in tax matters is now considered a standard requirement among investors. Some investors set up demands for the companies they invest in. This is also why we see an increasing focus on the design of tax policies, tax strategies and communication efforts regarding such matters. Many corporations have already been inspired by the B Team principles and we believe that many more will follow.

We observe and assist more and more MNEs and financial institutions in engaging in the tax policy discussions, in order to tell their side of the story and to impact the policy design of new legislation. We have become heavily involved in such matters and we are quite impressed by the demand for this type of services in the current landscape.

One of the key international developments is the rise of the Digital Service Tax (DST) in multiple jurisdictions. Although the EU proposal has been repealed, many jurisdictions continue their efforts to design and implement their own totally unharmonized DST. This development calls for coordinated action in order to avoid the negative effects on international trade of such turno-ver based taxes which are ring-fencing particular business models – i.e. highly digitalized businesses.

The call has been heard by the OECD and EU, who have initiated an introduction of harmonized measures. What started out as a part of the BEPS project to handle the perceived challenges arising as a consequence of the digitalization of the Economy, has now turned into a general exercise with the objective of allocating more tax to market states. This is



seen in the form of the so-called Unified Approach proposed by the OECD Secretariat. At the time of the writing of this editorial, the OECD Pillar I and II are up for public discussion. These initiatives demonstrate that the international tax landscape is under reconstruction. Fundamental principles regarding the allocation of income among states are under pressure and market states – so it seems – will end up getting a bigger piece of the pie by way of a disruption from the arm's length standard and using a formulaic approach. In addition to this, further BEPS measures are being developed, which aim at ensuring a level playing field by way of a global minimum taxation on corporations – the GloBE tax. In their totality, these initiatives combined may lead to significant ETR increases for consumer facing (in a very broad sense) businesses. The policy makers should be extremely careful in the design of the rules, as double taxation and unsolvable disputes may rise as a consequence. Therefore, the initiatives must equally emphasize efficient double taxation relief mechanisms.

The tendency continues towards increased transparency in tax matters. The past year has offered many stories about the EU Directive on Administrative Corporation (DAC) 6 on mandatory reporting and exchange of information regarding certain cross-border arrangements. Harsh regimes have been implemented in several EU member States, although many stats have not yet fully implemented the directive. Not only tax advisors are worried about this initiative and the disproportionality of it, but also many MNE's show concern. We see this initiative to be a part of a global tendency and we believe that it will not end here.

Fairness in taxation or fair share taxation continue to be a widely used buzzword of current times among certain policy makers. In sum, taxes are still moving up the political and societal agenda.

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 seen in some EU Member States that the implementation is seen 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 wide 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 of taxpayers. Future guidelines from the European Court of Justice will be greatly sought for.

All the above tendencies will ultimately lead to increased burdens in terms of compliance, increased risk of double taxation and increased legal uncertainty of which we are only just witnessing the first results.

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 and livelihood.

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. In 2019 we have been rewarded with the best recognition a company can get – client reviews which exceeds even our own expectations. In addition to this, the firm is considered an elite tax firm according to the official ranking. Thank you for these acknowledgements!

Our professional efforts continue to lie within international tax in a broad sense. In 2019, we have suc-cessfully 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. Similarly, we continue to see that our transfer pricing efforts take up more time in light of tightened legislation in several jurisdictions.

Without further ado, please enjoy the newsletter.

*Jakob Bundgaard*

## Team Developments

As of June 2019, our Academic advisor, Peter Koerver Schmidt, has been appointed professor with special responsibilities in international tax law at Copenhagen Business School (CBS). The focus of the professorship is to carry out research on international tax law. We see this appointment as an endorsement of our relentless focus on technical competencies and legal capabilities.

Peter Koerver Schmidt has been appointed as national reporter for Denmark for the 2020 IFA conference on the topic Reconstructing the tre-aty network .

Our partner Katja Dyppel Weber has been portrayed as the IBFD's author of the month in the September newsletter.

Senior associate and ph.d.-scholar Louise Fjord Kjærsgaard has been a visiting scholar at New York University from the summer of 2019 until beginning of 2020 as part of her research.

## News

Although somewhat skeptical about professional ranking directories we have played along in one annual ranking conducted by International Tax Review (ITR) in their World Tax and World Tax Transfer Pricing directories of the world's leading tax practitioners, which we believe to be the most credible in the market. In the 2020 World Tax Ranking we are please to find ourselves among the elite tax firms merely 7 years after our establishment.




We received the following feedback:

CORIT Advisory has positioned itself as one of the foremost boutique tax firms in Denmark. It offers tax consulting services to a variety of clients on a range of topics, but has a particular focus on advising clients on international tax matters.

Client feedback:

*"CORIT is comprised of technically excellent people who also know how to deliver top quality services tailored for the individual client company. The work CORIT performs is always in the absolute top of the range."*

*"CORIT Advisory's work is always thoroughly prepared. They deliver 360-degree analysed solutions, conclude with a minimum of qualifications and always deliver in a timely manner. Best recommendation."*

*"Top class firm with top class service. Very competent team."*

*"When it comes to complex, theoretical advice, our experience of CORIT is better than the Big Four. The advice received from CORIT is simply more thoroughly prepared and proactive than competitors."*

*"All other tax and TP service providers – although some really good – in my experience are inferior to CORIT."*

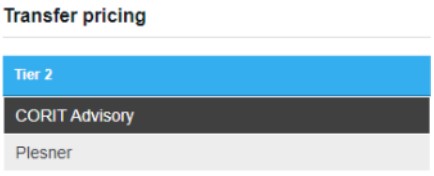
In addition to this we received good feedback from the market in the 2019 Tax Advisory Survey, carried out by International Tax Review. The survey is carried out among ITR's global readers including global tax directors, who were asked to vote for their top three advisory firms in more than 50 jurisdictions. No votes from advisory firms were counted and firms could



not send boasting submissions (marketing material) to improve their chances of being ranked. The objective is to recognize companies which the marked regards highly for a particular focus. The survey looks at the whole profile of a firm, not just its size and well-known practitioners. We are ranked Tier 1 as the only boutique firm and above all (but one) of the big law firms.

We allow ourselves to celebrate this milestone and promise to keep up the efforts to improve even further.

In the 2020 World Transfer Pricing guide we are ranked as a Tier 2 firm. We aim at becoming a Tier 1 firm also within the area of specialization.




# Impact

## Books

- Danish National Report in Implementing Key BEPS Actions: Where Do We Stand?, IBFD, 2019 (Bundgaard & Koerver Schmidt).
- Erhvervsbeskatning, DJØF, 2019 (Koerver Schmidt & Tell).
- Lærebog om indkomstskat, 18 ed. , 2019 (Nørgaard Laursen).
- The Never Ending Story: Sambeskatningsreglerne og EU-retten, Selskaber - Aktuelle emner II. 2019 (Nørgaard Laursen).

## Articles

- Permanent Establishment for Investors in Private Equity Funds – A Legal Analysis in Light of the Changes to the OECD Model (2017), Nordic Tax Journal, 2019, issue 1.
- Abuse and Avoidance – A Contemporary Analysis of Danish Tax Law, Revue europe enne et internationale de droit fiscal / European and International Journal of Tax Law, 2018, issue 4, p. 489-499.
- Allocation of the Taxing Right to Payments for Cloud Computing-as-a-Service.
- Taxation, General Anti-Avoidance Rules and Corporate Social Responsibility.
- Taxation of Cryptocurrencies from the Danish and Swedish Perspectives .
- The Principle of Legality in the Context of Danish Tax Law.
- Taxation, General Anti-Avoidance Rules and Corporate Social Responsibility.
- Comment on Danish Supreme Court ruling in Microsoft Transfer Pricing Case.
- Transfer Pricing – Status pa skønsmæssige ansættelser.
- EU-domstolen underkender danske regler der begrænser anvendelsen af underskud opsta et i udlandet (Bevola-sagen).
- Status pa omga elsesklausulen i ligningslovens § 3.
- Implementering af skatteundga elsesdirektivet (ATAD) i dansk ret.
- Status pa OECD's arbejde vedrørende digitaliseringen af økonomien – fra et fokus pa tech-giganter til forslag om global minimumsbeskatning af virksomheder, der opererer internationalt.
- Hvor langt rækker en skattemæssig tilsidesættelse?
- Beskattes gevinstmuligheder virkelig i dansk skatteret?
- Bevola-dommen, NN-dommen og de danske sambeskatningsregler: en status.
- Klimainstrumenter – Om beskatning af kvoter og kreditter vedrørende drivhusgasser.
- Fast driftsstedsbegrebet i intern dansk ret og betydningen af 2017-opdateringen af OECD's modeloverenskomst.
- Kommentarer til udvalgte afgørelser: Overførsel af en gevinstmulighed, beskatning af urealiserede værdistigninger pa anparter og A/B-modeller.
- Den generelle omga elsesklausul efter implementeringen af skatteundga elsesdirektivet.
- Aage Haugland-dommen.
- Fuld skattepligt ved tilflytning og betydningen af kendelser, som er



offentliggjort uden SKM-nummer.

- International skatteret 2018-2019.

## Reports

- As national reporter Katja Dyppel Weber & Henrik Guldhammer Nielsen has authored the Danish national report of the 2020 EATLP conference on the topic: Taxation and Value Creation, 2020.
- Interest Deduction: The implementation of BEPS Action 4. IFA Congress, London, Cahiers de droit fiscal international, vol. 104a.
- Tax Risk Management, IBFD, country Chapter for Denmark.
- As a member of the Danish Tax Law Council Jakob Bundgaard has co-authored the following reports: Den tredje gruppe pa arbejdsmarkedet.

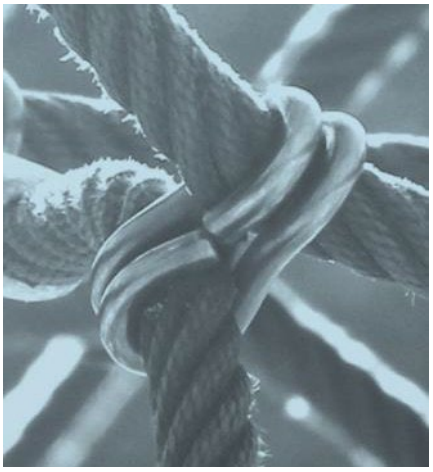
## Presentations

In 2019 the following presentations (+ many others) have been delivered by CORIT members:

- CFC Legislation – Background, BEPS & GloBE.
- Making sense of corporate taxation and CSR.
- IFA 2019 Subject A: Interest deductibility: the implementation of BEPS Action 4.
- Tax seminar on the global tax enviroment.
- The Mandatory Disclosure Regime
- Rust conference: Danish Input Statement – Implementing ATAD Article 7 & 8.
- GREIT conference: The Role of the ATAD in Restoring Fairness.
- Communicating taxes in the 21th century.
- Taxable presence in digital business models.
- Digital Intermediary Platforms.
- Dansk Forening for EU-skatteret: Lovudkast om endelig underskud (SEL § 31E).
- Implementering af EU's Anti-Tax Avoidance Direktive(r).
- Koncernseminar 2019.
- Overblik over nyere praksis vedrørende transfer pricing.
- Skatterevisorforeningen - beskatning af finansielle kontrakter og virtuelle valuta.
- Fagligt Netværk – November 2019.
- Dansk Forening for EU-skatteret: Lovudkast om CFC-regler
- Ansvarlig skat?
- Afgrænsning af la n i skattemæssig henseende.
- Fagligt Netværk – September 2019.
- Fagligt Netværk – April 2019.

## Work in progress

- Taxable Presence in the Context of Highly Digitalized Business Models – Understanding the actual need for changes to the permanent establishment concept in the age of digitalization, forthcoming in Tax Notes International, January 2020.
- The Preference of Debt over Equity for Tax Purposes in Corporate Taxation, Kluwer 2020 (Bundgaard & Tell).
- Blockchain Technology and the Allocation of Taxing Right to Payments Related to Initial Coin Offerings (Fjord Kjærsgaard).
- Restoring Fairness of the International Tax System – Will the EU Anti-Tax Avoidance Directive help ensuring the sustainability of the international tax framework? (Koerver Schmidt).
- Danish CFC Legislation and the ATAD (Koerver Schmidt).
- Danish Branch Report in IFA Cahier de droit fiscal international, 2020 Congress in Cancun, Subject 1 – Reconstructing the Treaty Network (Koerver Schmidt).
- Monograph on the EU-ATAD GAAR (Bundgaard, Fjord Kjærsgaard & Tell).
- New edition of the monograph on taxation of derivatives (Weber).
- New edition of the textbook on international taxation (Schmidt, Tell and Weber).
- Country chapter on Denmark in Taxation of Value Creation, EATLP series, published by IBFD (Guldhammer and Weber).
- Chapter to a conference book on the influence of the ECJ Abuse doctrine on the GAAR (Bundgaard & Tell).



## Other activities

CORIT team members continues to be represented in a number of tax associations including EATLP, IFA, DVCA, Danish Association of EU Tax Law and the Danish Tax Law Council.

## Thank you all for a splendid 2019!


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**Contact us:**

Give us a call for further information about the CORIT Point of View or our tax consulting services.

**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 busi-ness models, transfer pricing, strategic tax advice and tax controversy. Our tax advisory services are based on a thor-ough 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.