

Anti-Hybrid Regulations and Source Taxation – the Danish Experience

This presentation will cover the following points.

Introduction

I will start with a table showing possible hybrid combinations. To date these include hybrid entities (taxable, transparent), financial instruments (equity, debt) and ownership (different economic owners for the same object). It may be that a fourth category, arbitrage between article 7 and 9 OECD is coming; if so a question should be whether it is possible to reckon with that upfront.

I will also analyze the basic mechanics behind hybrid tax planning (and tax accidents) as this may be essential in finding effective solutions against it.

Anti-hybrid legislation

I will start with a short review of my experience as a Dutch lawyer with the problematic uncertainties around deviant hybrid entity legislation (Dutch limited partnerships/*Commanditaire vennootschappen*). I will then go through the Danish hybrid legislation for corporate income taxes and cover the current legislation, its background, parliamentary history and current Danish case law. I will use a.o. SKM 2013.234.LSR as illustrative case law. This topic will constitute the bulk of my presentation.

The role of withholding taxes in anti-abuse legislation

I will argue that it is possible to protect a country's tax base against interest erosion by levying withholding taxes on the creditor, instead of denying deductible expenses to the debtor. Such a mechanism can both protect the national tax base and avoid economic double taxation at the same time. I will address such issues as treaty override and identification of payment streams to be taxed.

Quantum physics of taxation

I will end with a short philosophical overview of the current BEPS world. My basic argument is that if we keep doing what we are doing, we will keep getting what we got. For inspiration and practical out of the box thinking, we may need to look elsewhere. Without providing solutions I will touch on the alternative use of game theory; novel solutions to other undesired citizen behavior, such as inner city crime, and the scientific method.

The above is a lot to cover in 45 minutes. I will endeavor to be clear and concise, and to neither lose or bore my audience in the process.

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