INTERNATIONAL TAX AVOIDANCE - A STARTING POINT

NORDIC TAX RESEARCH COUNCIL CONFERENCE REYKJAVIK, ICELAND MAY 5.TH. 2022

AARHUS BSS
JURIDISK INSTITUT
AARHUS UNIVERSITET

JAN PEDERSEN
PROFESSOR, DR. JUR.

Agenda

I. Introduction
II. The anatomy of tax avoidance
III. The forms of tax avoidance
IV. Measures against tax avoidance – An overview
V. Are we on the right path ?

Introduction

A. Same subject as at last NTRC- conference in Iceland 2017- but ever relevant and actual

B. The development has been overwhealming

C. What are we talking about in an economic context ?

D. The harmful effects of tax avoidance

The anatomy of tax avoidance

A. Three prerequisites:

1. The principal right to arrange ones own economic affairs
2. The interaction between private law and tax law
3. The four structural differences in the tax system
   a. The differentiated taxation of various types of taxpayers
   b. The differentiated taxation of various types of income
   c. The differentiated taxation in various income years
   d. The differentiated taxation in various tax jurisdictions

B. Use and misuse of the structural differences

The forms of tax avoidance

1. Income transfer
2. Income manipulation
3. Income mistiming
4. Income shifting

The legal questions to be addressed

Ref.1: *WHO* is the right income earner ?

Ref.2: *WHAT* is the right income form ?

Ref.3: *WHEN* is the right income year ?

Ref.4: *WHERE* is the right tax jurisdiction ?

Measures against tax avoidance – An overview

A Anti avoidance provisions

1. SAAR´s
2. GAAR

B Improved tax control

1. DAC 6 Mandatory disclosure
2. TP-documentation and Country by country reporting

C Multilateral convention on BEPS

D Other measures

1. Revised Transfer Pricing Guidelines
2. Taxation of Permanent Establisments
3. Taxation of the Tech Industry (OECD Pillar 1)

Conclusion:

- A ”law jungle” of – very – complicated and extensive rules has been created
- The tax law is under erosion
- Huge amount of money is spent in administration and control of the anti avoidance legislation
- Former French president Hollande: Tax avoidance is evil and must be erased from the Globe

Are we on the right path ?

- Can the tax system survive the many SAAR´s and an intensive application of GAAR´s ?

Tax avoidance as a foreign policy problem and not a tax problem in the high tax states – Foreign policy remedies must be used

THANK YOU FOR YOUR ATTENTION