Aalto University
School of Business

The implementation of Art. 6 ATAD in Finland

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Agenda

- Brief introduction
- The Finnish implementation
- The reasoning
- Potential changes to Finnish practice

A Brief Introduction of Myself

- Moritz Scherleitner
- 2015: MSc. (WU) Taxation and Accounting at Vienna University of Economics and Business
- 2019: LL.D. Financial Law at University of Helsinki
- 2/2014-8/2021: Employed/affiliated with PwC
- Since 8/2021: Assistant Professor, Aalto
- Research interest: International tax policy and EU tax law.
- Languages: German, English and Finnish

The Finnish legislator´s view: No need for changes

- Finland has a long tradition of General Anti Abuse Rules
- Finland regarded the existing GAAR of Sec. 28 VML to already cover the requirements of Art. 6 ATAD

Sec. 28 of the Act on Tax Procedure

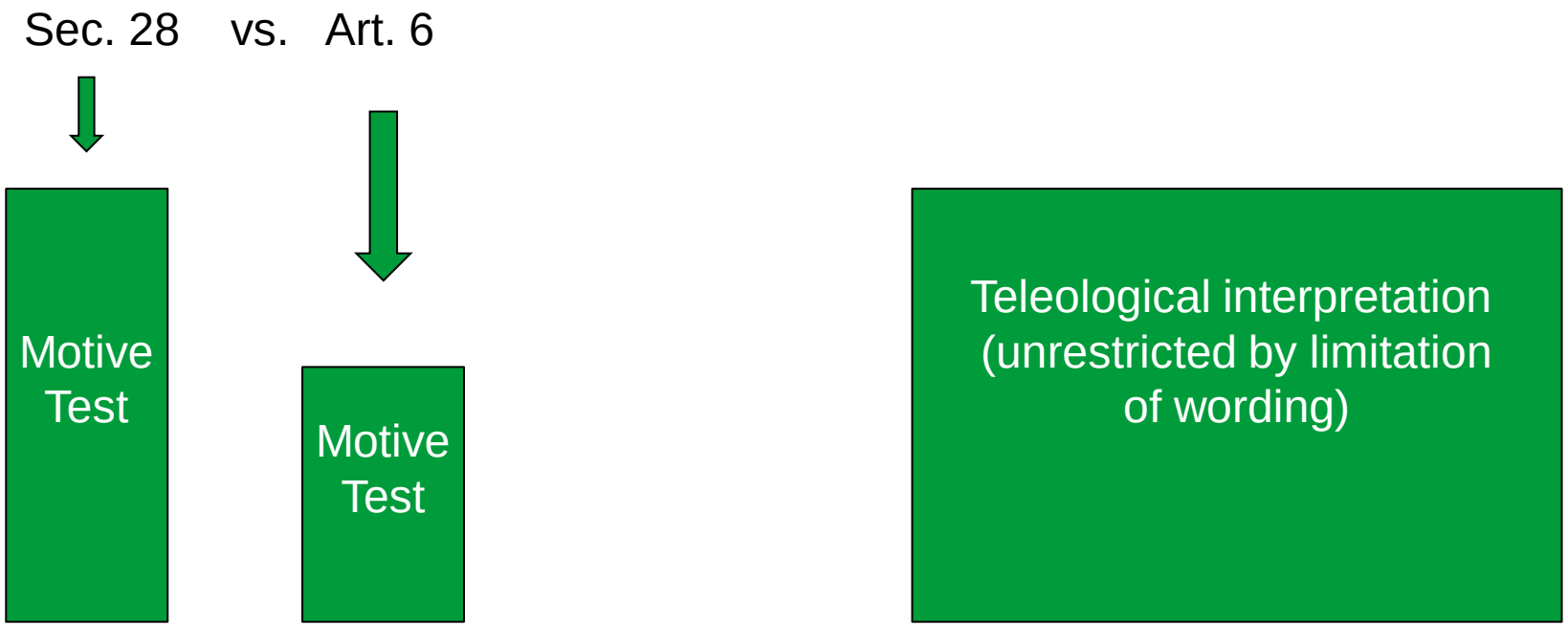
- Sec. 28(1): If a circumstance or an arrangement is given such a legal form, which does not conform to its actual nature or purpose, taxation is carried out as if the actual form had been used. If it is evident that a price, other compensation or the moment of payment has been agreed on, or other action has been taken, in order to avoid taxes, the taxable income and capital can be estimated.
- Sec. 28(2): If it is evident that taxation should be carried out in accordance with paragraph 1, all facts and circumstances that may have an impact on how the case is evaluated must be carefully investigated. The taxpayer must be given the opportunity to provide clarification on the observations. If the taxpayer does not provide evidence that the form used conforms to the actual nature or purpose or that it is not evident that the arrangement was made in order to avoid tax, taxation must be carried out in accordance with paragraph 1.

The reasoning for relying on Sec. 28 VML

- Finnish GAAR:
  - Same goal as Art. 6 ATAD
  - Covers the scope of application of Art. 6 ATAD
  - Non-genuine requirement of Art. 6 ATAD essentially covered by substance over form approach of Sec. 28 VML
  - Substance over form + combined with evident tax avoidance purpose requirement „overall“ stricter than directive (?)
  - Includes the objective/teleological element, just as Art. 6 ATAD
  - Ignoring the arrangement is the legal consequence, just as with respect to Art. 6 ATAD
- No need for a change -> no need to interpret existing case law in the light of the wording of the new provision

Will the Finnish practice (still) change?

- Depends on how the ECJ case law on Art. 6 ATAD will develop



Thank you for your attention

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