

LL § 3 – EN STATUS I LYSET AF EU-DOMSTOLENS SENESTE PRAKSIS OG NY FORSKNING

4. juni 2025 – Masterclass – Copenhagen Business School

Peter Koerver Schmidt
Professor, BHL / CBS LAW



Agenda

LL § 3 – En status i lyset af...

1.
 - Baggrund
 - Almene principper i dansk ret
 - Det skatteretlige udgangspunkt
 - Diskussioner om at indføre en lovfæstet omgåelsesklausul
 - Implementeringen af ATAD-GAAR'en
 - Misbrugsbegrebets indhold
 - Ny dom fra EU-domstolen
2.
 - Nordiske perspektiver
 - World Tax Journal, vol. 13, no. 3 (2024)



Hvad er retsmisbrug?

I almenretlig forstand

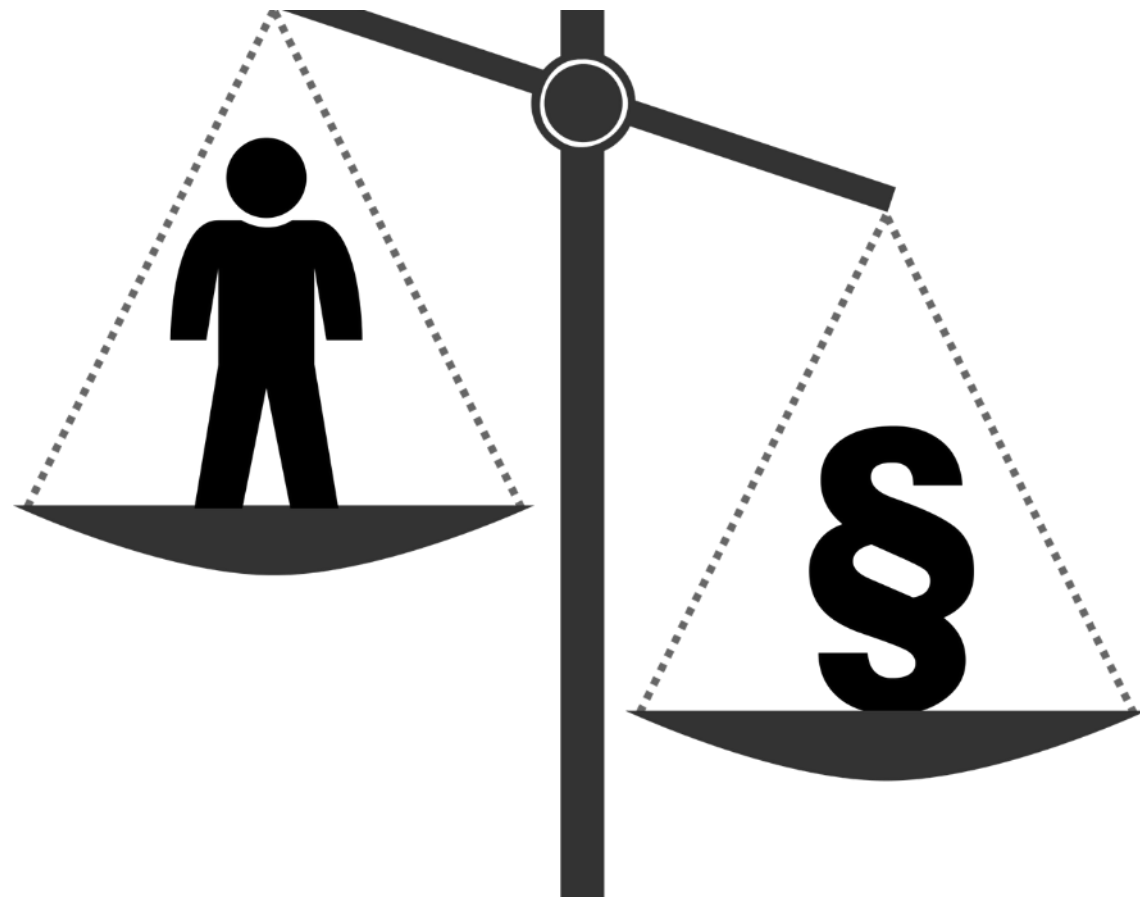
"Retsmisbrug" foreligger, når det er urimeligt eller i strid med redelig handlemåde at gøre retten gældende. Ved afgørelsen af, om der foreligger retsmisbrug, skal der lægges vægt på, om retten udøves udelukkende eller i det væsentlige for at skade andre, eller i strid med rettens formål...".

"... visse forudsætninger skal være opfyldt, førend man taler om omgåelse: Der skal for det første være tale om en tvingende retsregel (påbuds- og forbudsnorm), for det andet må der være foretaget en reel disposition, fx indgåelse af en aftale med henblik på at komme uden om loven, og for det tredje er det en forudsætning, at den foreliggende disposition strider mod den umiddelbare og sædvanlige forståelse af påbuds- eller forbudsnormen."

Jens Evald, *Retsmisbrug i formueretten*, Jurist- og Økonomforbundets forlag (2001), p. 42 og 146.

Almene principper i dansk ret

Forfatnings- og forvaltningsretten



Forfatningsretlige grundprincipper

- Klassisk magtfordeling foreskrevet, men af ganske kompleks karakter
- Legalitetsprincippet (den formelle lovs princip og hjemmelskravet)
- Privatautonomi og kontraktsfrihed
 - Modereret over tid ud fra samfundsmæssige hensyn, f.eks. lovfæstede generalklausuler i civilretten

Forvaltningsretlige grundprincipper

- Legalitetsprincippet
- Saglig forvaltning (magtfordrejningsgrundsætningen)
 - Lighedsprincippet
 - Proportionalitetsprincippet

Det skatteretlige udgangspunkt

Hovedregler og modifikationer

- Skatteydernes civilretlige dispositioner må anerkendes
 - Legitimt at dispositioner styres af skattemæssige overvejelser
- Ingen lovfæstet misbrugsklausul i skattelovgivningen – før ATAD-implementering i 2018
- Alligevel har domstolene været villige til at gribe ind over for misbrug i skatteretten
- Doktrinen: Næppe nogen egentlig, generel, ulovfæstet misbrugs- eller omgåelsesklausul i dansk skatteret
 - Men måske en realitetsgrundsætning?



Realitetsgrundsætningen

Findes den eller findes den ikke?

Jan Pedersen (1989), Jørgen Nørregaard (2001) og Jakob Bundgaard (2006)	• Beskatningen kan knyttes til den underliggende økonomiske substans, frem for de ydre juridiske formalia, når disse blot udgør en "retlig kulisse" for en anden realdisposition • Dette kan beskrives som en i retspraksis udviklet "realitetsgrundsætning".
Isi Foighel (1990), Thøger Nielsen (1990), Aage Michelsen (2000), Jacob Graff (2003), Henrik Dam (2004), Søren Friis Hansen (2008), Anders Nørgaard Laursen (2019) m.fl.	• Faktumbedømmelse og lovfortolkning kan ikke ske isoleret fra hinanden. • Uden semantisk reference og klarhed over retsvirkningerne. • Retskilden for tilsidesættelse af omgåelse er domstolenes praksis og ikke realitetsgrundsætningen. • Der er med andre ord tale om almindelig lovfortolkning, hvor omgåelseshensigten kan indgå som en blandt flere faktorer.
Peter Koerver Schmidt (2020)	• I omgåelsessager forsøger domstolene at opretholde en fornuftig balance mellem retlig formalisme, nødvendig realisme, rimelighed og behovet for at beskytte skattesystemet. • Særtrækkene i Højesterets tilgang risikerer at blive overset, hvis tilgangen reduceres til et spørgsmål om helt almindelig lovfortolkning eller omvendt sættes på en piedestal og anskues som en konsekvent anvendelse af en praksisudviklet omgåelsesklausul.
Jon Stokholm (2021)	• "... en strid om kejserens skæg." • Ikke en retsgrundsætning eller en ulovbestemt generalklausul. • Et almindelig kendt og anvendt værktøj til fastlæggelsen af det faktum, dommeren lægger til grund ved sin retlige subsumption. • Ikke en betingelse at der foreligger skatteudnyttelse. • I bund og grund udtryk for et bevisbedømmelsesredskab.

Forsøg på at introducere en lovfæstet misbrugsklausul i skatteretten

En ophedet debat

- Beslutningsforslag nr. 2, Folketingstidende, Forhandlingerne, 1982/1983, spalte 107.
- Lovforslag nr. 173, Folketingstidende, Tillæg A, 1984/1985, spalte 3445-3454.
- Beslutningsforslag nr. 19, Folketingstidende, Forhandlingerne, 1992/1993, spalte 1519.

Opgivelse af
fundamentale
retsprincipper

Urealistisk

Vilkårlig
behandling

Betydelig
retsusikkerhed

Kræver
skønserklæring fra
psykiater

Bliver et gadens
parlament

Blæser på det enkelte
individ

Mérbeslætning af
skattemyndigheder

Forargelsen hører
hjemme i kirkeministeriet,
ikke skatteministeriet

Sovepude for
Folketinget

Svenske erfaringer er ikke
et argument

Uciviliseret

Lovgivningskompeten-
cen overføres til
skattemyndighederne

Indførelsen af en lovfæstet generel misbrugsklausul

Dansk implementering af Skatteundgåelsesdirektivet

- Lov nr. 1726 af 27. december 2018 → Ligningslovens § 3
 - Stk. 1-3 bygger på Skatteundgåelsesdirektivet (ATAD-GAAR)
 - Stk. 5 bygger på OECD's Modeloverenskomst 2017 (PPT)
 - ATAD-GAAR har forrang for PPT

} Tekstnær
implementering

"Stk. 1. Skattepligtige selskaber og foreninger m.v. skal...se bort fra arrangementer eller serier af arrangementer, der er tilrettelagt med det hovedformål, eller der som et af hovedformålene har at opnå en skattefordel, som virker mod formålet og hensigten med skatteretten, og som ikke er reelt under hensyntagen til alle relevante faktiske forhold og omstændigheder...

Stk. 2 ... ikke-reelle, i det omfang de ikke er tilrettelagt af velbegrundede kommercielle årsager, der afspejler den økonomiske virkelighed

Stk. 5... ikke fordel af en dobbeltbeskatningsoverenskomst, hvis det er rimeligt at fastslå... at opnåelsen af fordelen er et af de væsentligste formål... medmindre...i overensstemmelse med indholdet af og formålet med..."

Behandlingen i Folketinget

Meget begrænset debat

- Ingen nævneværdig modstand i Folketinget (ingen stemte imod)
- Spagfærdig modstand fra lobbyorganisationer mv.
 - Advokatrådet, Danske Advokater, Dansk Industri, FSR – Danske Revisorer
- Reaktion på høringssvar → Skattemyndighederne skal forelægge sager baseret på den lovfæstede generelle misbrugsklausul for Skatterådet, jf. LL § 3, stk. 7

“Den generelle omgåelsesklausul er en ny direktivbaseret regel, som skal sikre mod misbrug, og som finder anvendelse inden for hele skatteretten. Når bestemmelsen bringes i anvendelse, vil det desuden have den indgribende virkning, at der sker en fuldstændig tilsidesættelse af de arrangementer, der er vurderet at have som et hovedformål at opnå en skattefordel, som virker mod formålet og hensigten med skatteretten. Forslaget om, at Skatterådet skal træffe afgørelse om bestemmelsens anvendelse skal ses i lyset af disse særlige forhold og har til formål at sikre, at der følges en korrekt og ensartet fortolkning i sager, hvor der rejses spørgsmål om den generelle omgåelsesklausul.”

Lovforslag nr. 28 af 3. oktober 2018, p. 100.

En blandet modtagelse i doktrinen

Fra "juridisk misfoster" til "moderat begejstring"

"LL § 3 synes at være gaven der bliver ved med at give..."

J. Bundgaard, Taxo, 2020-61.

"Personligt er jeg nok mindre bekymret, idet den brede og temmelig elastiske ordlyd i ligningslovens § 3 må formodes at levne god plads til, at de danske domstole (fortsat) kan foretage pragmatiske vurderinger i skatteundgåelsessager. Samtidig indebærer lovfæstelsen den fordel, at lovgiver eksplicit har fået lejlighed til at bekræfte, at myndigheder og domstole helt bevidst er tillagt en vis margin til at forhindre skatteundgåelse."

P.K. Schmidt, Kritisk Juss, 2020, p. 207-220.

"Det er denne forfatters – faste – opfattelse at en lovfæstet generel omgåelsesklausul er overflødig og skaber flere problemer, end den tilsigter at løse... Den lovfæstede omgåelsesklausul er derfor et juridisk 'misfoster'..."

J. Pedersen i Den evige udfordring, Ex Tuto 2015, p. 119-120.

"En nærlæsning af reglen synes dog også at give et mere jordnært resultat; nemlig at reglen næppe i sig selv bidrager med noget i forhold til den hidtil gældende retspraksis...Det eneste, der synes at være ganske sikkert, er, at den nye regel i ligningslovens § 3 skaber retsusikkerhed."

P.R Bjare & S. Sønderholm, SR-SKAT, 2019, p. 110.

Misbrugsbegrebets indhold

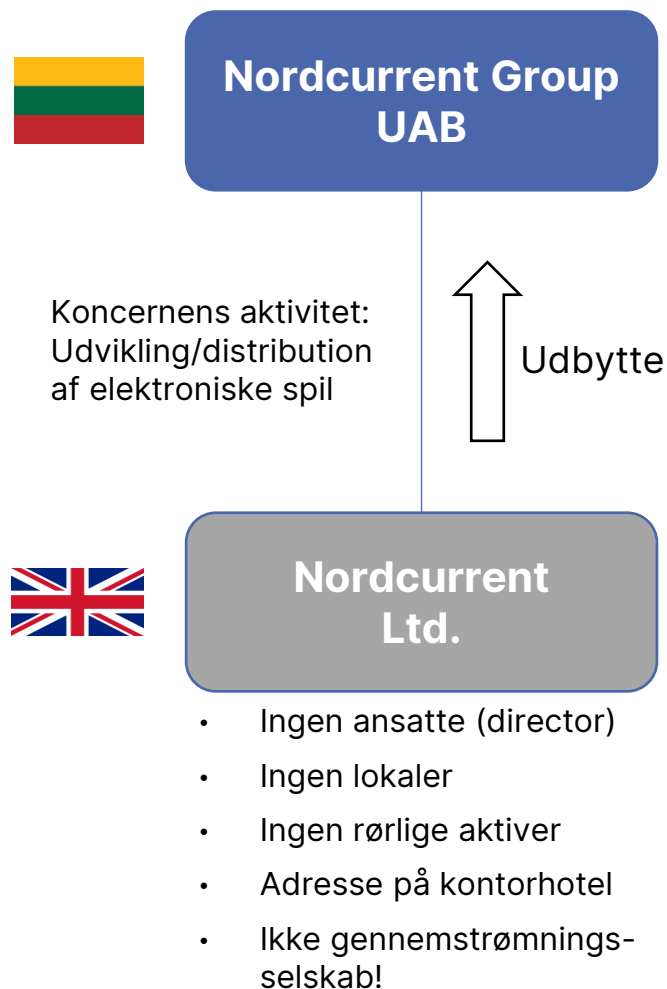
Anvendelse og fortolkning

- Rita de la Feria 2020: Tydelig kobling mellem EU-domstolens praksis om misbrug på skatteområdet og ATAD-GAAR
 - Misbrugsdoktrinen udgør et generelt forbud
 - ATAD-GAAR må anses som en skatteretlig kodificering heraf
- Bundgaard m.fl. 2021: De danske skattemyndigheder er bundet af EU-domstolens generelle misbrugsdoktrin
- Den Juridiske Vejledning, afsnit C.I.4.1.9: Skal fortolkes i overensstemmelse med direktivets ordlyd, som i nogen udstrækning bygger på EU-domstolens praksis



Ny dom fra EU-domstolen

Dom af 3. april 2025, Nordcurrent Group (C-228/24)



- Ved en skattekontrol i 2023 fandt myndighederne at selskabet skulle have været beskattet af udbytter i 2018 og 2019
 - § 32, stk. 6 i den litauiske selskabsskattelov:
 - [skattefritagelsen] finder ikke anvendelse på et arrangement eller en serie af arrangementer, der er tilrettelagt med det hovedformål, eller der som et af hovedformålene har, at opnå en skattefordel, som virker mod indholdet af eller formålet med direktiv 2011/96[...], og som ikke er reelle under hensyntagen til alle relevante faktiske forhold og omstændigheder.
 - Et arrangement kan omfatte flere trin eller dele. Arrangementer eller serier af arrangementer betragtes som ikke reelle i det omfang, de ikke er tilrettelagt af velbegrundede kommercielle årsager, der afspejler den økonomiske virkelighed.
- Afgørelsen blev indbragt for det litauiske Skatte- og afgiftsklagenævn
 - Forelagde tre præjudicielle spørgsmål...

Ny dom fra EU-domstolen

Dom af 3. April 2025, Nordcurrent Group (C-228/24)



- Præmis 24-30 → EU-rettens generelle forbud mod misbrug er relevant at inddrage
 - *T Danmark & Y Danmark* (C-116/16 & C-117/16)
 - *Cadbury Schweppes & Cadbury Schweppes Overseas* (C-196/04)
- Præmis 31 → Værnsreglen finder også anvendelse i situationer, der ikke angår gennemstrømningsselskaber, forudsat at de elementer, som udgør misbrug, foreligger
- Præmis 43 → Det er ikke i orden, uden undtagelse, kun at tage den situation i betragtning, som forelå på selve udlodningstidspunktet. Der skal tages hensyn til alle relevante forhold og omstændigheder
- Præmis 46 → Ikke nok at fastslå, at arrangementet ikke er tilrettelagt af velbegrundede kommercielle årsager... Det må også fastslås, at arrangementet er blevet tilrettelagt med det hovedformål at opnå en skattefordel...
- Præmis 47 → Der kræves altså en kombination af objektive omstændigheder og et subjektivt element
- Præmis 52-55 → Skattefordelen (konkret fritagelsen for udbytteskat) skal ikke vurderes isoleret, mens baseret på alle relevante forhold og omstændigheder → Konkret var det relevant at inddrage det faktum, at skattesatsen i Storbritannien var højere end i Litauen, som et blandt flere momenter

The paper

A Nordic collaboration



UNIVERSITY
OF TURKU



LUND
UNIVERSITY



Henrik Skar, Reijo Knuutinen,
Peter Koerver Schmidt and Richard Croneberg*

Interpretation and Application of General Anti-Avoidance Rules after BEPS and ATAD: Nordic Perspectives

This article compares general measures against tax avoidance and the design of general anti-avoidance rules (GAARs) in Denmark, Finland, Norway, and Sweden. It focuses on aspects such as tax benefits, tax purposes, economic substance, and breaches of legislative purpose. The article also examines potential compliance issues between national GAARs, tax treaties, and the European Union's Anti-Tax Avoidance Directive (ATAD). The analysis highlights variations in how the national GAARs apply economic substance considerations and the level of pragmatism allowed when assessing conflicts with the purpose of the circumvented legislation. Additionally, it shows that differences in the wording of the GAARs, such as requirements related to tax purposes, do not necessarily result in practical differences due to other GAAR elements reducing or nullifying them. For similar reasons, the authors conclude that compliance issues between the national GAARs and the ATAD GAAR's requirements are unlikely, despite some differences in wording. Whilst focusing on the Nordic region, the article offers insights relevant to broader international contexts, as the diverse approaches, distinctions and issues identified mirror tax developments worldwide.

Contents

1. Introduction	509
2. Research Aim and Approach	512
3. Legal and Cultural Differences	513
4. Comparison of the Elements of the GAARs	517
4.1. Design and key features	517
4.2. Tax benefits	522
4.3. Motive/purpose test	525
4.4. Substance-over-form test	528
4.5. Defeating the legislative purpose	532
4.6. Legislative passiveness	535
4.7. The legal consequences of applying the GAARs	538
5. Alignment with EU Law	541
5.1. The interaction between national GAARs, EU primary law and the ATAD	541
5.2. Falling short or going too far? – Striking a balance in implementing the ATAD GAAR	542
5.3. Potential spillover effects on the EEA Agreement	546
6. Interaction with Tax Treaties and the PPT	547
6.1. Application of the Nordic GAARs to tax treaties lacking a PPT or similar clauses	547
6.2. Application of the Nordic GAARs to tax treaties containing the PPT	549
7. Floating Together?	553
8. Summary and Conclusions	554

* Henrik Skar is Associate Professor at University of Bergen, Reijo Knuutinen is Professor at University of Turku, Peter Koerver Schmidt is Professor at Copenhagen Business School as well as Professor II at University of Bergen, and Richard Croneberg is Associate Senior Lecturer at Lund University.

The idea and aim

Taking stock 50 years after



“The underlying legal conditions are similar in the different Nordic countries. Not only with respect to the tax regulation itself, but also, and this is of particular importance in this context, when it comes to the civil law regulation and the view of the relationship between civil law and tax law. At the same time, however, the Nordic countries show a number of differences when it comes to solving the avoidance problem.”

Gustaf Lindencrona, General Reporter at the 1975 annual seminar of the Nordic Tax Research Council

The Nordic legal tradition

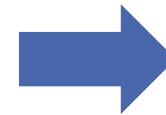
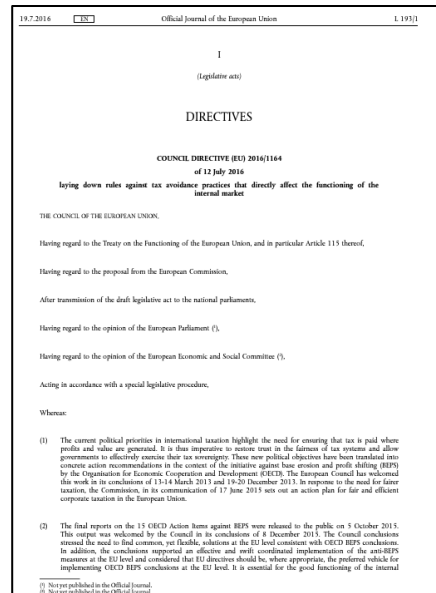
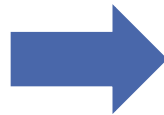
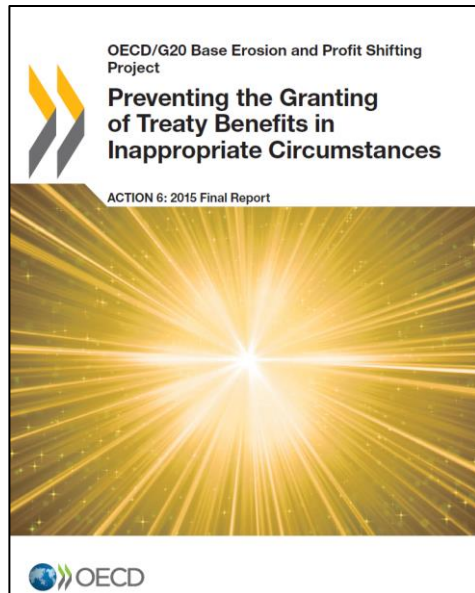
A legal family or just a geographical gathering of approaches?

- Not political unity, but strong traditions for cooperation and exchange of ideas
- The Nordic legal tradition is sometimes described as a halfway point between civil law and common law
- Influenced by Scandinavian Legal Realism, i.e. a positivistic yet pragmatic approach to the application of law, drawing heavily on preparatory works and case law
- A Nordic East-West Divide
 - Denmark and Norway: Case law-based pragmatic approaches
 - Sweden and Finland: More formalistic and structured approaches
- Some elements of the Nordic GAAR's align rather closely to common law approaches and others lean toward the continental approaches → The paper may contribute to understanding similar issues faced by other/diverse legal systems/families

Point of departure

Vastly different approaches

- Denmark and Norway have traditionally operated without formal GAARs, instead relying on court-developed doctrines, purposive interpretation or legal pragmatism to combat avoidance
- Finland and Sweden has had statutory GAARs in place for many years



New statutory GAAR



Nothing



Nothing



New statutory GAAR (none EU MS)

Research aim

Approach / Method

The overall aim is:

- to conduct a comparative analysis of how the Nordic GAARs have developed and are applied today whilst also exploring their potential future trajectories in light of harmonization efforts through OECD initiatives and the ATAD...
- with the objective of establishing how they resemble and deviate from each other, both in terms of underlying principles, formulation, specific conditions for application, and legal effects

The study relies on:

- the legal dogmatic traditions and interpretation standards of each country, and uses...
- a functionalist comparative approach



Main findings (1)

Tax benefit and motive/purpose test

- A common feature of GAARs is that they target tax benefits generated by the arrangement in question either by avoiding tax-increasing rules or by falling under tax-favourable rules
- All four Nordic GAARs share this characteristic, although the requirement is not equally explicit or delimited
- All four Nordic GAARs contain a motive test, i.e. a requirement that the purpose of the taxpayer's actions was to obtain a tax benefit, but several distinctions appear

				
Tax advantage	Yes	Yes ("Significant")	Yes	Yes
Motive/purpose test	Yes The tax benefit must be the obvious purpose. If the taxpayer can present genuine and sufficient business reasons for his actions, the GAAR cannot be applied. However, thin business reasons are not enough to shield the taxpayer.	Yes The tax benefit must be the predominant purpose. If there are any non-tax reasons for structuring the arrangement in the chosen way, and they appear as the principal purpose, the GAAR is not applicable.	Yes The tax benefit must be "one of the main purposes". Additionally, the GAAR stipulates that the arrangement must not be genuine. If the transaction is carried out for "valid commercial reasons" that reflect reality it can be genuine, even if one of the main purposes is to obtain a tax benefit.	Yes The arrangement must demonstrate that its "main purpose" is to save tax (entry condition). Yet, non-tax purposes that are secondary to the tax purpose, can potentially protect the taxpayer, in the comprehensive assessment of whether the arrangement constitutes a non-recognizable avoidance scheme.
Objective or subjective motive/purpose test?	Both Under the GAAR's first prong, where a conflict between substance and form must be demonstrated, it matters what purposes the transaction objectively promotes. The GAAR's second requirement delves into the actual motives.	Objective based on external factors related to the transaction.	Both While 'one of the main purposes' is viewed as a subjective test, the assessment of whether the arrangement is genuine based on valid commercial reasons is objective.	Objective Based on how a rational actor would reason in the same situation.

Main findings (2)

Substance over form argumentation

- The potential conflict between an arrangement's legal form and its economic substance is central to many GAARs
- Such GAARs typically involve assessing whether an arrangement lacks substance or non-tax effects, either by making minimal changes to the original situation or by replicating the substance of another form or transaction that would not have resulted in the tax benefit.
- These types of assessments are crucial under the Norwegian, Danish, and Finnish GAARs, whereas the Swedish GAAR demands that the arrangement is assessed on its legal (private law) merits

				
Substance over form argumentation	Application necessitates that the form does not align with the transaction's true nature or objective.	Not recognized under the GAAR.	Transaction must not be genuine , when emphasising commercial reasons and economic reality.	Important to demonstrate that the transaction lack non-tax substance/effects , or that the effects mimics another form that would not result in the tax benefit.

Main findings (3)

Defeating legislative purpose – Who can apply?

- All the statutory Nordic GAARs place emphasis on whether the tax advantage obtained through a given arrangement somehow defeats the object or purpose of a particular tax provision or the tax legislation as such
- However, the methods employed for this assessment varies, and there are differing opinions and general confusion as to how this assessment should be conducted
- The legislator's passiveness or knowledge about the avoidance opportunity may play a role, however the role is probably more limited in a Norwegian context
- The legal consequence in all four countries is recharacterization, but differences in who can apply

				
Defeating legislative purpose	Relevant, but not strictly required to demonstrate a conflict with legislative purpose.	Only applicable if the tax benefit defeats the purpose of the tax legislation.	Only applicable if the tax benefit defeats the object and purpose of the tax legislation.	Relevant to demonstrate a conflict with the purpose of the circumvented tax legislation, but it is framed as an important factor in the comprehensive assessment, rather than as a strict requirement.
Who can apply the GAAR?	Ordinary tax authorities.	Tax authorities must bring the case before the Swedish Administrative Court.	Tax authorities must bring the case before the National Tax Council.	Ordinary tax authorities.

Main findings (4)

Compliance with EU law requirements – Striking the right balance

- Despite sovereign MS competence within direct tax matters it must be exercised in line with EU/EEA law, including the four fundamental principles → But prohibition of abuse of law is a CJEU-developed principle relevant within all areas of law
- ATAD is a minimum directive → MS may implement stricter rules, as long as they are in line with EU primary law (i.e. not treating similar cross-border issues more harshly than internal ones unless...)



Compliance issues with ATAD?	There is a risk of a compliance issue because the Finnish GAAR appears to impose stricter requirements regarding the tax purpose for its application than the ATAD GAAR. However, most likely this does not result in a compliance issue, due to the ATAD GAAR's additional requirement that the arrangement must be non-genuine, which brings the actual thresholds closer together.	There is a risk of a compliance issue because the Swedish GAAR apparently imposes stricter requirements regarding tax purpose for its application than the ATAD GAAR. However, most likely this does not result in a compliance issue, due to the ATAD GAAR's additional requirement that the arrangement must be non-genuine, which brings the actual thresholds closer together.	No compliance issues arise as Denmark has incorporated the ATAD GAAR directly into its domestic legislation.	Norway is not a member of the EU and is therefore not bound by the ATAD.
-------------------------------------	--	---	---	---

Main findings (5)

Interaction with tax treaties

- Are application of national GAARs allowed in tax treaty situations?
- Existing (but scarce) case law and literature suggest that the answer is yes in all four countries, at least if the treaty does not contain a GAAR itself
- But what if the treaty does include a GAAR (e.g. a so-called PPT)?

				
Is the GAAR applicable to treaty benefits?	If a treaty lacks a GAAR, it is generally assumed that the national GAAR can be applied. For treaties that include a GAAR, such as the PPT, the treaty GAAR is applied directly.	If a treaty lacks a GAAR, it is generally assumed that the national GAAR can be applied. For treaties that include a GAAR, such as the PPT (and this has been ratified), the treaty GAAR is applied directly.	Based on statements in the preparatory works to the statutory GAAR, it is assumed that it can be applied to treaty benefits both where the tax treaty lacks a GAAR and where it includes a GAAR, such as the PPT. This implies that the domestic GAAR takes precedence over the PPT.	If a treaty lacks a GAAR, it is generally assumed that the national GAAR can be applied. For treaties that include a GAAR, such as the PPT, the treaty GAAR is applied directly.

Conclusions

Looking ahead

- The Nordic countries have come closer together in their general approaches to tax avoidance
- The adoption of statutory GAAR's across all four countries, along with Denmark, Finland, and Sweden adhering to the ATAD requirements, means that the starting point for discussions and issues of interpretation has become more aligned
- Integrating EU jurisprudence and interpretations of the ATAD will further support this interplay
- However, the harmonisation process will not happen overnight
- Moreover, it would be misleading to say that the four Nordic countries are moving towards one unified approach
 - ATAD only sets minimum requirements, in principle allowing for more extensive national GAARs
 - Norway's position outside the EU, meaning that the ATAD does not apply
 - Distinct legal traditions

Tak

Peter Koerver Schmidt
Professor, Copenhagen Business School

Mail: pks.bhl@cbs.dk
Phone: +45 2363 8588

SKATTEUNDGÅEELSESGLEGER V. EJENDOMSRETTIGHEDER

Master i Skat Masterclass 4 juni 2025

Jeroen Lammers
Assistant Professor
jla.bhl@cbs.dk



When Anti-Avoidance Measure and Property Rights Collide

Aim

- Explore when anti-tax avoidance rules infringe upon protection of property rights.

Key findings

- Five key evaluation indicators are identified:
 - 1) Disregard for the **Ability-to-Pay principle**.
 - 2) **Mechanical application** of the rules.
 - 3) Overly **broad scope**.
 - 4) Absence of **Recourse**.
 - 5) Emphasis on **administrative efficiency** over effectiveness.

Implications

- The article offers a **practical risk assessment tool** for tax practitioners, tax policymakers, and tax authorities to assess whether existing tax rules could risk violating property rights
- It offers guidance in the **design of future rules** to avoid such violation.

Dagsorden

**Ligningsloven
§ 16 E**

**Den Europæiske
Menneskerettigheds-
domstol**

**Case Studies (LL
§ 16E, CFC og
UTPR)**

Konklusion

Ligningsloven § 16 E

LL § 16 E

Hvis en aktionær låner fra sit eget selskab, beskattes lånet som enten udbytte eller løn.



Kapitalejeren bliver beskattet allerede på det tidspunkt, hvor lånet udbetales.



En eventuel tilbagebetaling af lånet ændrer ikke på beskatningen

Udfordringer med håndhævelse



Et effektivitetstiltag, der styrker håndhævelsen og samtidig har en forebyggende effekt.



Dobbeltbeskatning er en forudset og accepteret konsekvens

Højesterets domme fokuserer ofte på gentagne lån og tilbagebetalinger.



SKM2024.44.HR

Dobbeltbeskatning er ikke en “criminal penalty”, efter EMRK artikel 6



SKM2023.124.HR og SKM2022.431.HR

Løbende hævnninger og tilbagebetalinger på mellemregningskontoen er ikke “sædvanlige forretningsmæssige dispositioner”

Løbende hævnings- og tilbagebetalinger



L 171 Forslag til lov om ændring af ligningsloven, afskrivningsloven, opkrævningsloven og skatteindberetningsloven.

på dagsorden til 3. behandling den 3. juni 2025

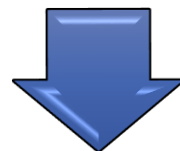
virkning fra den 1. januar 2026.



en aktionær ikke beskattes af nye lånebeløb i det omfang, aktionæren har tilbagebetalt tidligere lån.

Konsekvens af LL § 16 E

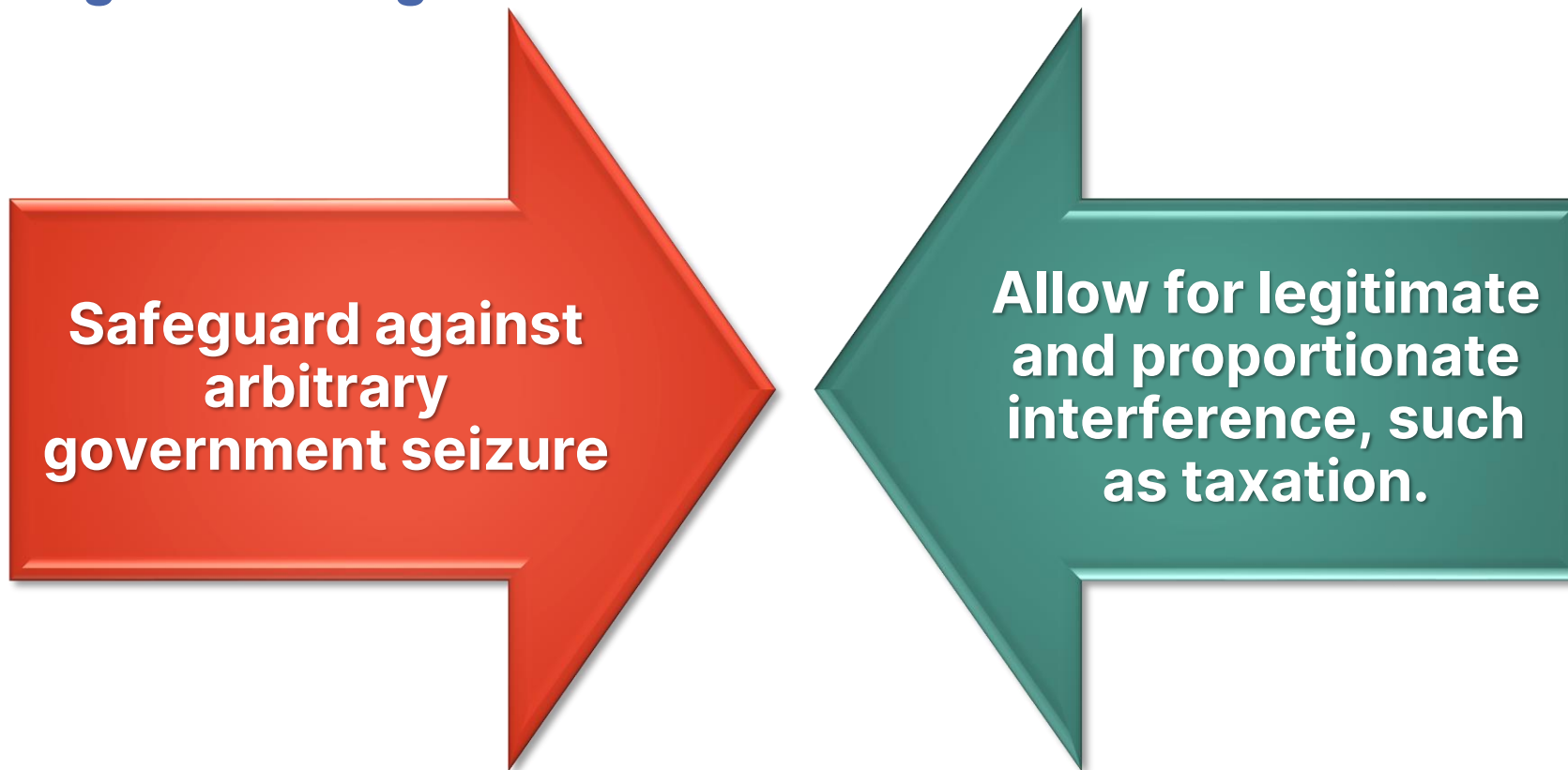
Skatteyderen, der handler at arm's length, behandles dårligere



Der opstår ingen reel indkomst, hvis lånet er givet på markedsvilkår.

Den Europæiske Menneskerettighedsdomstol

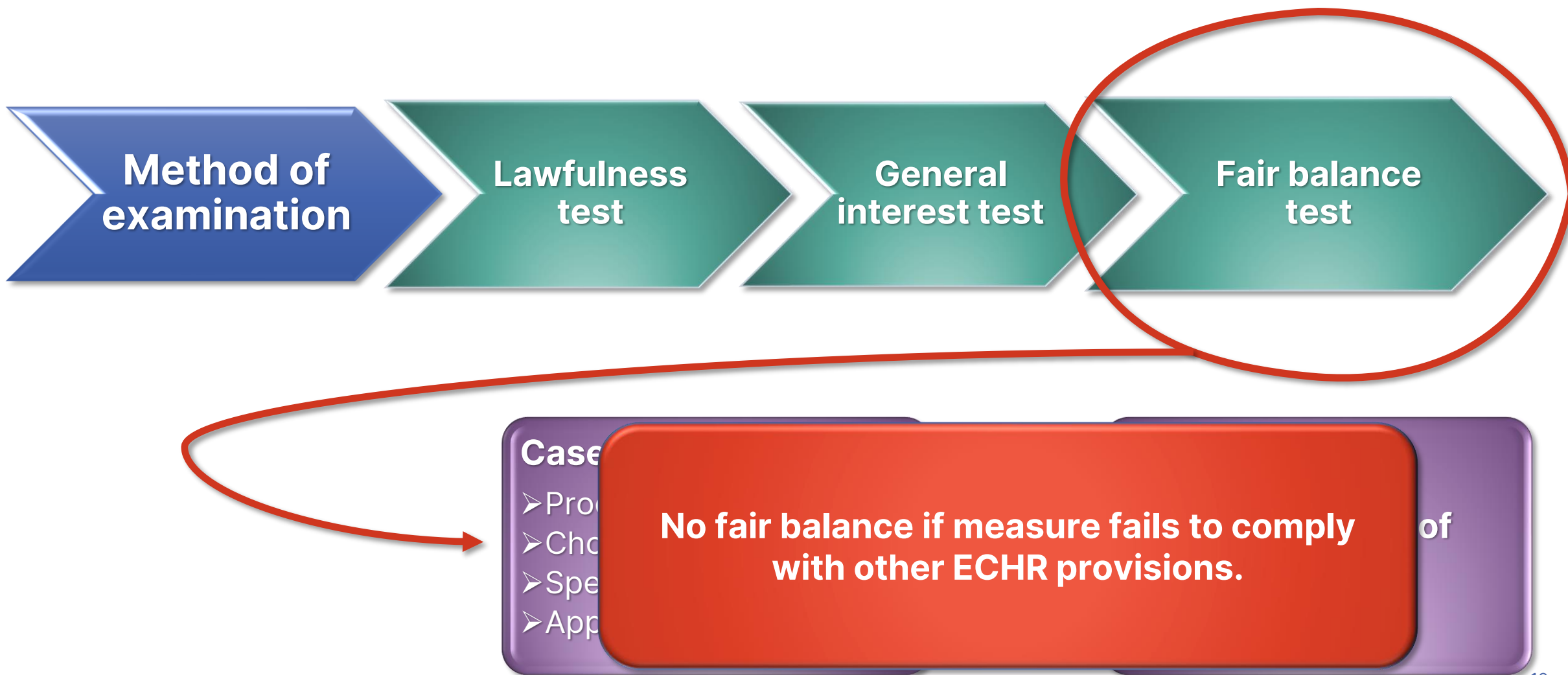
Traktater og forfatninger



§73

Stk. 1. Ejendomsretten er ukrænkelig. Ingen kan tilpligtes at afstå sin ejendom, uden hvor almenvellet kræver det. Det kan kun ske ifølge lov og mod fuldstændig erstatning.

Den Europæiske Menneskerettighedsdomstol



Må ikke-eksisterende indkomst beskattes?

Ability-To-Pay

- Anti-abuse rules should not stray too far from economic reality
- Legal fictions should not rely on compounding assumptions

Application

- Legal fictions should not treat different situations the same

Scope

- Legal fictions should not apply indiscriminately to compliant taxpayers

Recourse

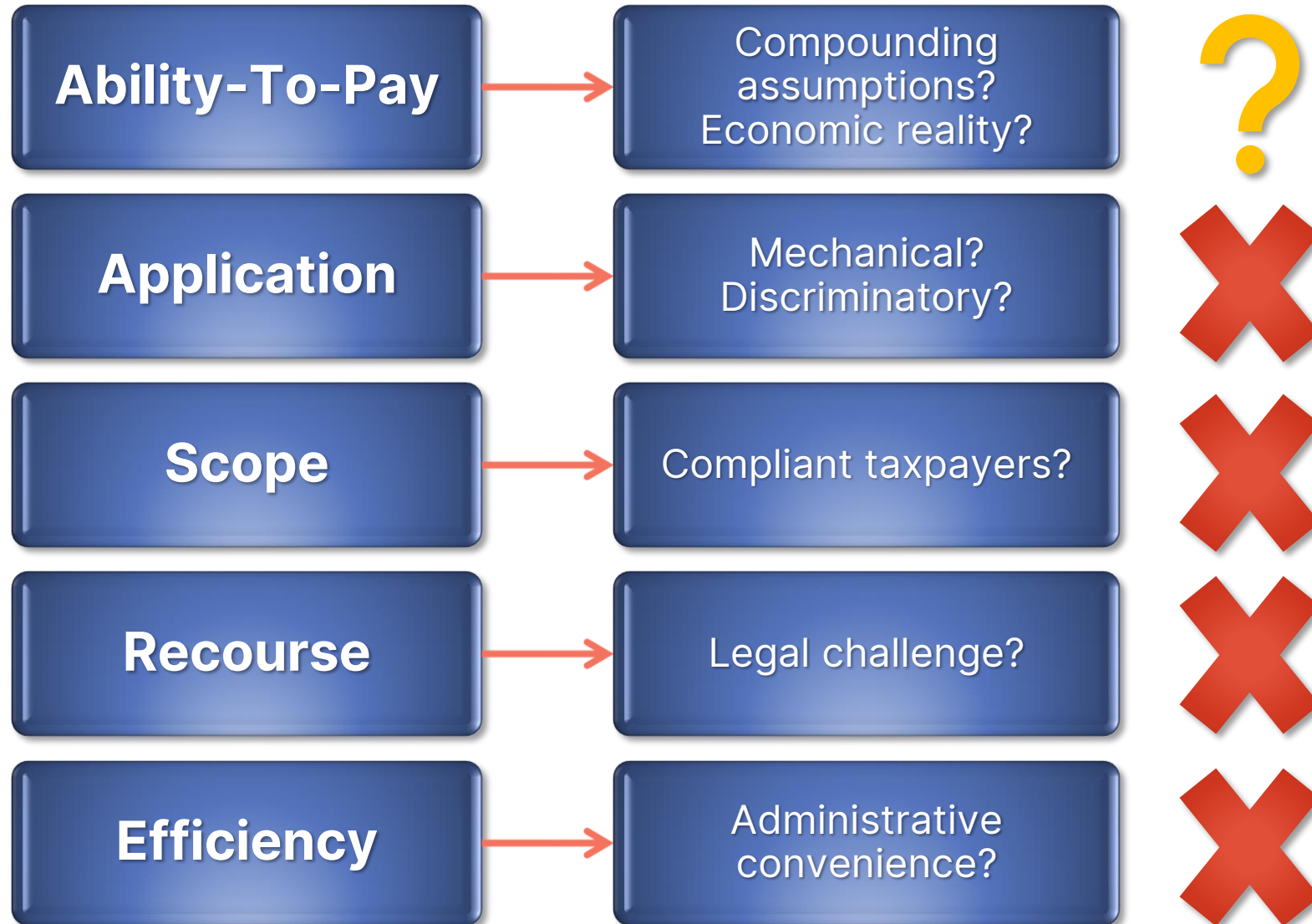
- Anti-abuse rules should allow for legal challenges to these rules

Efficiency

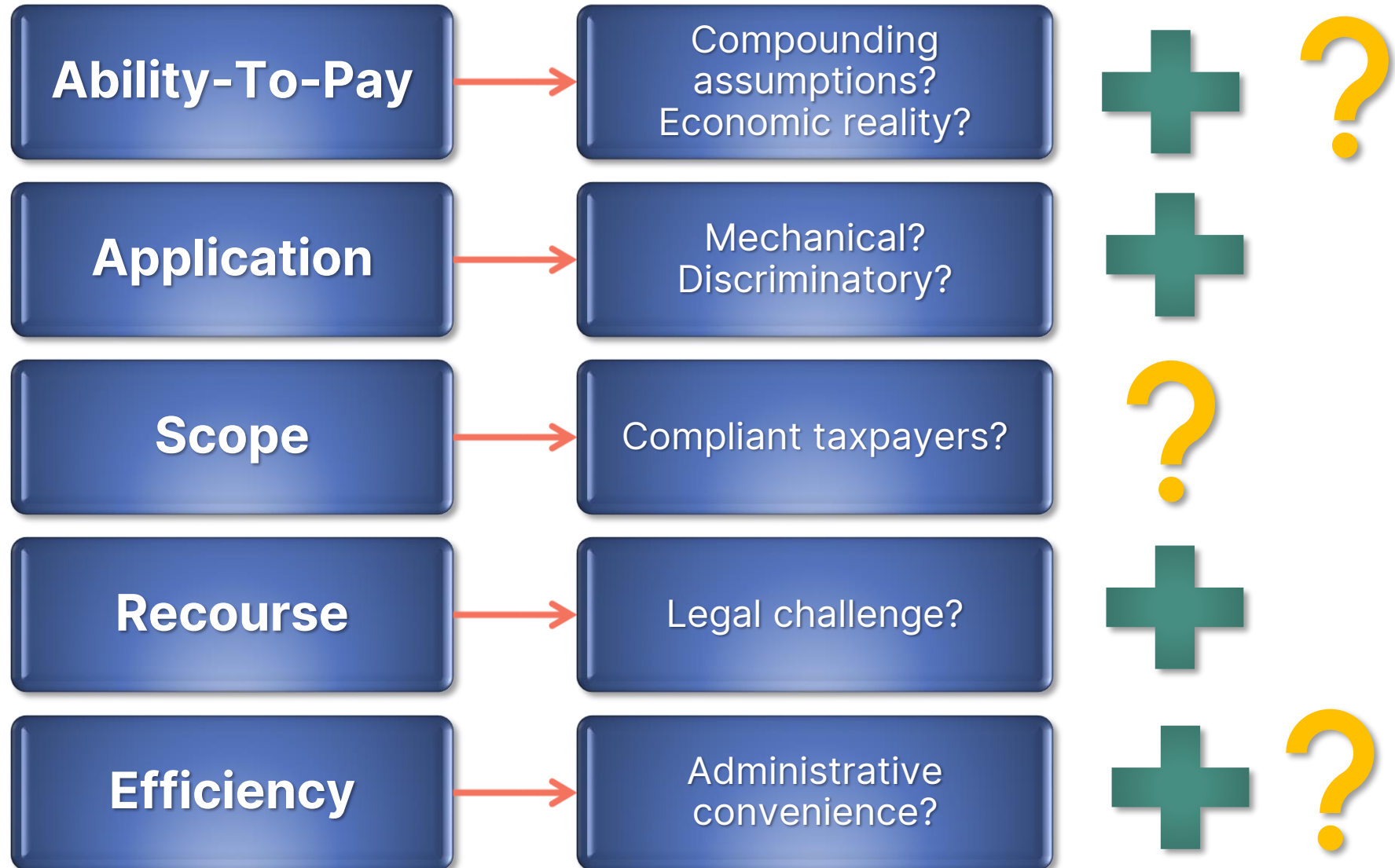
- Legal fictions' design should not favour administrative convenience over proportionality.

Case studies

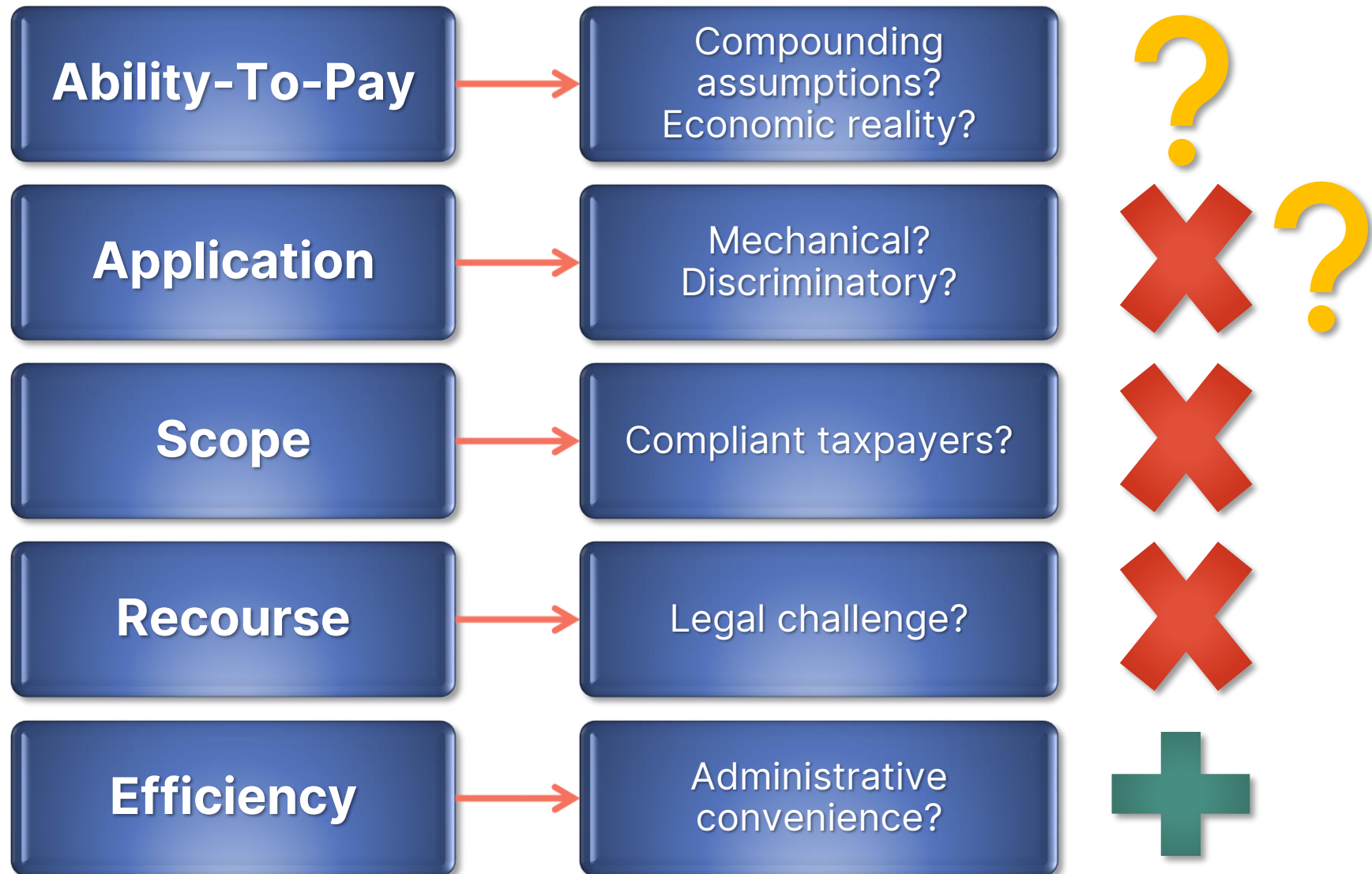
Testing the Framework: LL § 16 E



Testing the Framework: CFC Rules



Testing the Framework: UTPR



Konklusion

When Anti-Avoidance Measure and Property Rights Collide

Aim

- Explore when anti-tax avoidance rules infringe upon protection of property rights.

Key findings

- Five key evaluation indicators are identified:
 - 1) Disregard for the **Ability-to-Pay principle**.
 - 2) **Mechanical application** of the rules.
 - 3) Overly **broad scope**.
 - 4) Absence of **Recourse**.
 - 5) Emphasis on **administrative efficiency** over effectiveness.

Implications

- The article offers a **practical risk assessment tool** for tax practitioners, tax policymakers, and tax authorities to assess whether existing tax rules could risk violating property rights
- It offers critical guidance in the **design of future rules** to avoid such violation.

NORDTECH A/S THE DIGITAL TAX TRANSFORMATION CHALLENGE

Master i Skat Masterclass 4 juni 2025

Siddhesh Rao
Post Doc
sir.bhl@cbs.dk

NordTech A/S The Digital Tax Transformation Challenge

- Case Study
 - NordTech A/S: Leading digital services firm
 - CFO Jacob Andersen's dilemma: Full AI adoption vs. hybrid model
 - Post-merger integration with AI-driven fintech Finsoft ApS
 - Pressure from EU expansion and complex regulatory environment
 - Core decision: Automate 80% of tax operations or maintain human oversight

The Business Context Why Tax Technology Transformation is Critical

- NordTech's Challenges Mirror Industry Trends
- Rapid EU and Nordic market expansion
 - New OECD and EU tax regulations
 - Real-time reporting requirements
 - Complex post-merger integration needs
- Technology transformation drivers
 - Mounting operational inefficiencies
 - Cost reduction pressures
 - Competitive AI adoption in the market
- Strategic imperative
 - Choose between full automation or hybrid approach
 - Balance efficiency gains with regulatory compliance
 - Address staff concerns about job security

Human-Centered Design in Tax Tech

- Design Thinking Application
- Pain points: Manual compliance, VAT complexity, transfer pricing burden
- Solutions: AI e-invoicing, predictive analytics, blockchain audits
- Tech Assessment: Finsoft integration, ERP alignment
- Implementation: Staff training, phased rollout, performance tracking

Culture Shift at NordTech

- Digital Mindset and Resistance
- Concerns: AI ambiguity, accountability, regulatory scrutiny
- Push for AI: Cost savings, task efficiency
- Cultural Shift: Train AI-competent staff, build trust in AI

Tax Technology Categories

- Four Key Areas
 - Internal: AI engines, ERP integration
 - Knowledge: Legal AI, training platforms
 - External: Skattestyrelsen, EU/OECD systems
 - Client-facing: Dashboards, portals, analytics

AI Fundamentals

- Data vs. Rules-Based AI
- Data-Driven: VAT fraud, TP benchmarking, Pillar Two
- Rules-Based: CbCR, DAC7, VAT calc
- Hybrid: AI for routine, human for complex

Digital Maturity Assessment

- From Defined to Transformed
- Current: Manual + basic ERP
- Target: 80% automation, AI-first, hybrid teams

Data Model Requirements

- Architecture for AI
 - Objectives: Compliance, audit trail, analytics
 - Sources: ERP, Finsoft, VAT data
 - Metadata: Jurisdiction, transaction type, audit trails

Workflow Design for Hybrid Model

- WFMS Components
- Automation: VAT, CbCR, DAC7
- Human Review: Exceptions, interpretation
- Integration: Finsoft, ERP, dashboards

EU VAT Use Case

- AI-Powered VAT Compliance
- Challenges: Manual calc, ViDA readiness
- Solutions: Real-time VAT engine, e-invoicing automation
- Phases: Domestic → Cross-border → ViDA

BEPS & Transfer Pricing

- AI for International Tax
- CbCR: ERP data extraction, auto reports
- TP: Benchmarking, risk assessment
- Pillar Two: ETR calc, safe harbor

Process Mining Insights

- Optimizing Tax Operations
- Findings: 65% automatable, 15-day cycles
- Targets: 80% faster VAT, 90% CbCR automation

AI Strategy Options

- Three Approaches
 - Full: 80% automation, fast ROI
 - Hybrid: 50%, balanced oversight
 - Conservative: 20%, low risk

Risk & Mitigation

- Managing AI Risks
 - Technical: Accuracy, integration, cyber threats
 - Regulatory: Compliance gaps, audits
 - Organizational: Resistance, knowledge loss
 - Solutions: Phased rollout, retraining

Blockchain for Tax

- DLT Applications
- VAT: Validation, e-invoicing, audit trails
- TP: Benchmark tracking, transaction logs

Performance Metrics

- Measuring Success
- Efficiency: Time, errors, productivity
- Cost: Savings, ROI
- Quality: Compliance, audit readiness
- Strategic: AI maturity, positioning

Change Management

- Leading Transformation
- Leadership: T-shaped skills
- Transition: Role shifts, AI training
- Stakeholders: Boards, auditors, clients

Regulatory Compliance

- Authority Alignment
- Skattestyrelsen: Real-time, transparency
- EU: GDPR, DAC7, ViDA
- OECD: BEPS, Pillar Two

Tech Architecture

- System Design
- Components: AI engines, analytics
- Integration: ERP, portals, warehouse
- Security: Encryption, access control

Financial Impact

- Cost-Benefit Analysis
- Investment: €1.15M
- Annual Savings: €1.7M
- Payback: 8 months, NPV €4.2M

Competitive Benchmarking

- Positioning in Market
- Automation: NordTech 15% → 80%
- Practices: Hybrid AI, real-time tax
- Edge: Finsoft AI, EU readiness

Implementation Roadmap

- 12-Month Plan
 - Phase 1: Systems & training
 - Phase 2: Core VAT/TP automation
 - Phase 3: Advanced features
 - Phase 4: Full deployment

Success Factors

- Dependencies
- Technical: Integration, AI accuracy
- Organizational: Leadership, training
- External: Regulator buy-in, best practices

Future & Scalability

- Strategic Vision
- Tech: Quantum, IoT, advanced AI
- Regulation: OECD/EU shifts
- Business: M&A, client expansion

Decision Framework

- Recommendation: Hybrid Plus
- 70% automation, phased 18 months
- Priorities: VAT, TP, staff training
- Milestones: 50% cost drop, 99% accuracy