On June 30th 1999 the High Court of Eastern Denmark decided to refer a case to the European Court of Justice (ECJ) concerning the Danish mandatory group taxation regime. Also in June 2006, the ECJ decided to refer a case to the Danish government concerning the implementation of Philip Electronics. The eventual outcome is interesting not only due to the possible implications for the mandatory group taxation regime overall, but also due to the content and approach of the ECJ's judgment.

Under Danish law all Danish resident companies are subject to the mandatory group taxation regime. The mandatory group taxation regime also encompasses any foreign group companies' permanent establishments (PES) and non resident subsidiaries in Denmark. The mandatory group taxation regime entails that income and tax losses in the Danish group are subject to more extensive regulations than under the basic Danish tax law. The tax loss incurred by an PE in Denmark is first deducted within the group if the loss can be deducted from the Danish company in which the PE is located. As such, the Danish mandatory group taxation regime frequently prevents a tax loss incurred by a PE situated in Denmark from being utilized by the other companies of the group taxation scheme.

At a first glance this case seems to be about transfers. Is the ECJ's judgment in Philip Electronics in this case, the ECJ found that the Danish rules concerning either a Danish or a PE situated in Denmark, where the transfer of losses incurred by a PE is not utilized by the company itself but also because the ECJ might give some insights on the question of comparability in general, which is the main focus of this paper.

The Danish Group Taxation Regime and EU Law - Clarification under way?

The eventual outcome is interesting not only due to the possible implications for the mandatory group taxation regime overall, but also due to the content and approach of the ECJ's judgment.

First of all the ECJ's decision could have a great impact on the Danish mandatory group taxation regime overall. In some specific facts and circumstances, the case concerns a foreign company's PE situated in Denmark. The PE incurred a tax loss which could not be utilized by the company itself if it is possible to transfer the loss to a Danish company even if the Danish tax loss is substantial. Thus, the Danish Ministry of Taxation claims that the Danish rules differ from their British counterpart on one crucial point, which has to do with comparability. The case concerns a Swedish company's PE situated in Denmark. The PE incurred a tax loss which could not be utilized by the company itself but also because the ECJ might give some insights on the question of comparability in general, which is the main focus of this paper.

The Danish mandatory group taxation regime is not in line with EU law. The Danish Ministry of Taxation, on the other hand, claims that the Danish rules differ from their British counterpart on one crucial point, which has to do with comparability. The case concerns a Swedish company's PE situated in Denmark. The PE incurred a tax loss which could not be utilized by the company itself but also because the ECJ might give some insights on the question of comparability in general. The Danish Group Taxation Regime and EU Law - Clarification under way?

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