AALBORG UNIVERSITY
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The treatment of Danish commercial foundations in the Minimum Taxation Act

Simon Mogensen

Supervisor: Jonas Grud Henriksen

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Name of department:	Aalborg University Business School
Author:	Simon Mogensen, Ministry of Finance and Taxation in Greenland
Student ID:	20103371
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Topic description:	Danish commercial foundations are exempt of taxation on distributions given for charitable purposes. With the implementation of the Minimum Tax Act, this could result in a Top-up Tax if the foundations are not recognised as an excluded entity.
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Summary of the thesis

The theory of the thesis is *"The treatment of Danish commercial foundations in the Minimum Taxation Act"* and will examine the tax-related obstacles for foundations in relation to the Minimum Taxation Act.

Paragraph 2 and 3 gives an overall introduction on the Model GloBE Rules / the Minimum Taxation Act on how the legislation will work and which effect it will have, among other a Top-up Tax which will increase the effective tax rate of jurisdictions to a minimum rate of 15 %. This leads the thesis onto paragraph 4, in which the Danish Commercial foundations are introduced and explained the problems where foundations can lower its effective tax rate to 0 % by distributing or donating to charitable and public benefits.

Paragraph 4 will continue with an examination of the Danish implementation of the Model GloBE Rules in the Minimum Taxation Act and if it was possible for the Danish Ministry of Taxation to modify the legislation to conquer the problems with foundations at hand. It was concluded that very little could be modified, and the implementation is very close to the text of the EU Directive and the Model GloBE Rules.

With the conclusion from paragraph 4, paragraph 5 analyses whether some of the large and known Danish Commercial foundations would fulfil the requirements of the definition of a non-profit organisation and thereby be deemed an excluded entity. The result was that many foundations could not be deemed as a non-profit organisation, and thereby an excluded entity, as they are not exclusively established and operated for charitable and public benefit. Many commercial foundations are "mixed foundations", where they mix charitable purposes with distributions or priority, to descendants or businesses.

Continuing in paragraph 6, the thesis applied the Minimum Taxation Act rules on a foundation deemed an included entity, showing that the foundation would be Top-up Taxed through the Qualified Domestic Minimum Top-up Tax. As there is a difference between the Danish corporation tax of 22 % and the minimum tax rate of 15 %, it was also possible to scale mixed distributions on the formula of 15/22-part non-charitable distribution and 7/22-part charitable distribution and the effective tax rate will be 15 %.

1. Introduction, methodology and scope

1.1 Introduction

On October 8th, 2021, the OECD Inclusive Framework on BEPS, announced a statement where 130 member jurisdictions had agreed to the outline of drafting two international agreements on taxation. On 20th of December 2021, the Model GloBE Rules were announced and published.

The Danish Ministry on Taxation has estimated that the proposed rules on pillar 2 will increase the tax revenue in Denmark annually by 2.5 billion DKK. This is offset by a lost annual tax revenue of 1.9 billion DKK. on pillar 1. Resulting in a net tax revenue increase of 600 million DKK.[1] Therefore the implementation of pillar 2 is very important to make sure that the coherent international agreement is incorporated correctly and that the tax revenue will be neutral.

The thesis is first and foremost built on the foundation of an introduction and an explanation of the Model GloBE Rules in paragraph 2 and 3. In paragraph 4, there will be an introduction of the foundations and the potential problems that could come from the implementation of the Minimum Taxation Act. Furthermore, there is a technical analysis on the Danish implementation relative to the EU Directive / OECD Model GloBE Rules on the sections on excluded entities and non-profit organisations. Paragraph 5 examines if some large Danish commercial foundations would be recognised as a non-profit

[1] https://www.ft.dk/samling/20211/almdel/SAU/bilag/162/2538787.pdf

organisation and therefore an excluded entity. The following paragraph 6 analyses the taxable consequences of the foundations if it either is deemed a non-profit organisation or not. Finally, there will be a conclusion or summary of the thesis, including an assessment of what the future looks like for foundations.

1.2 Methodology

This thesis will use the legal dogmatic methodology, where the aim is to use the present and proposed legislation, to predict which factors and variables a judge, arbitrator, or tax council and administration would adhere to in a potential case.

The majority of this thesis will use proposed and current legislation, where the OECD has created a model legislation, which the EU has followed and created the council directive on ensuring a global minimum level of taxation for multinational groups in the Union.[2]

1.3 Theory

The theory of this thesis is *the treatment of Danish Commercial foundations in the Minimum Taxation Act*. The main objective of the thesis is to explain the complex set of legislation proposed to implement the OECD Model GloBE Rules on an overall level. Additionally, it will examine the Danish implementation of the Model Rules in relation to the Foundation Tax Act, and if it has been possible for the Ministry of Taxation to modify the regulations to consider the Danish concept of foundations. Included in this, will be an analysis of the consequences for foundations once the legislation is implemented and entered into force.

1.3.1 Out of scope

The thesis will not include the subject-to-tax-rule (STTR) which was agreed upon under the pillar 2 project. The STTR is an agreement, which is especially beneficial for developing countries, as the developing countries can tax up to 9 % of income from where jurisdictions have not exercised their taxing right. The STTR can be applied on interest,

[2] https://taxation-customs.ec.europa.eu/system/files/2021-12/COM_2021_823_1_EN_ACT_part1_v11.pdf

royalties and a specified list of other payments called "Covered income", including all intra-group service payments.[3] The STTR rules takes priority over the domestic GloBE rules and are implemented via either a multilateral instrument or bilateral treaty protocols opposite the GloBE rules which will be implemented in domestic legislation.

1.4 Caveat on the Danish Legislation

The legislation is an implementation of the Council Directive 2022-2523 of 14 December 2022, and the Act on a top-up tax on certain group entities (Minimum Taxation Act/MTA) was published in a public hearing from the 26th of June until the 18th of August 2023 and was proposed in the parliament on the 4th of October 2023, with 2nd and 3rd reading on the 5th and 7th of December 2023. The majority of this thesis will be based on the legislation as it was published in the parliament as Proposal L5 on the 4th of October 2023.[4][5]

In relation to this thesis, it is therefore very important to give the caveat, that the conclusions reached in the thesis is based on the legislation that was treated in the parliament, and not necessarily the legislation that will go into force on the 31st of December 2023, as this thesis has a deadline on the 12th of December 2023.

It's important to notice that there is still part of the pillar 2, where the negotiations have not ended, e.g., the "safe harbour" rules, which are to exempt certain activities that are estimated to have a minimum taxation of 15 %.[6]

The EU implementation of the EU directive exceeds the OECD Model Rules in relation to which companies are encompassed by the legislation. In the OECD Model Rules, only Constituent Entities, that are members of a "MNE Group" are encompassed cf. Article 1.1.1. However, for the EU directive, Constituent Entities, that are members of a "MNE

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[3] https://www.oecd.org/tax/beps/pillar-two-subject-to-tax-rule-in-a-nutshell.pdf

[4] https://www.ft.dk/samling/20231/lovforslag/l5/index.htm

[5] As of 7th of December 2023, the Minimum Tax Act was approved, with minor changes from the proposal to the approval.

[6] Cf. pp. 47 of the MTA proposal

Group" or "large-scale domestic group" are encompassed cf. Article 2.1. This is to make sure that the legislation lives up to primary Union Law and the freedom of establishment.[7]

Furthermore, as the legislation is an implementation of the EU-directive, and the EU-directive is an implementation of the OECD Model rules. The OECD Model Rules will add a significant value to the interpretation of the EU Directive. This is also supported by paragraph 6 of the preamble of the directive which refers that the legislation must be implemented in a way that is as close to the global agreement as possible.[8]

2. Global Anti-Base Erosion rules (GloBE)

In this paragraph and continuing in paragraph 3, there will be a short description of the main parts of the proposed legislations as well as an exposition of the interaction between the rules and why it is relevant to the main research question of this thesis.

The Pillar 2 agreement consists of two main parts, one part is the Subject-to-tax-rules (STTR), and the other part is the Global Anti-Base Erosion (GloBE) rules. The GloBE rules are implemented in each jurisdiction's domestic legislation, and consists of three essential pieces of legislation, The Income Inclusion Rule, the Undertaxed Profit Rule, and the Qualified Domestic Minimum Top-up Tax.

2.1 Which companies are in scope of the GloBE rules?

According to section 1 of the Minimum Taxation Act (MTA), the legislation is to be applied on group entities which is part of a multinational group or large national group, where the revenue is at least 750 million Euro in a year.

[7] Cf, para, 6 of the Council Directive 2022/2523 of 14th December 2022

[8] SR.2023.233 Note 13 and 14

The Danish Ministry of Taxation estimates that there are approximately 75 Danish Ultimate Parent Entities and 7.000 reportable international Constituent Entities with a Danish Ultimate Parent Entity.[9]

An Ultimate Parent Entity is defined as an Entity, which has direct or indirect ownership or controlling interest, and is not owned or controlled directly or indirectly by another entity cf. section 4(1)14).

2.2 Introduction to the Model GloBE Rules and the Minimum Taxation Act

The Model GloBE Rules is implemented in Denmark through the Minimum Taxation Act (MTA). The MTA is a large and complex set of legislation and when introduced in Denmark amounted to almost 80 sections unfolded over 500 pages including commentary. The following paragraphs will explain the essential parts of the legislation.

2.2.1 Minimum Tax Rate

The Minimum Taxation Act contains a Minimum Tax Rate, which is set to 15 % cf. section 4(1)15) in the MTA, agreed to by more than 138 jurisdictions under the Inclusive Framework on BEPS. If jurisdictions have an Effective Tax Rate below 15 %, jurisdictions are allowed to perform a Top-up Tax according to the Qualified Domestic Minimum Top-up Tax (QDMTT), Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR).

2.2.2 Income Inclusion Rule

The Income Inclusion Rules (IIR) are implemented in Section 6-11 in the MTA. The IIR determines that an Ultimate Parent Entity (UPE) in Denmark to Constituent Entities (CE) in Denmark and abroad, are to calculate and pay taxes on behalf of Low Taxed Constituent Entities (LTCE) in Denmark for the fiscal year cf. section 6. According to section 7, this is also the case if the Entity in Denmark is an Intermediate Parent Entity. An Intermediate Parent Entity is a Constituent Entity which has direct or indirect ownership or control over another Constituent entity but is not an Ultimate Parent Entity cf. section 4(1)20).

[9] Cf. pp. 50-51 of the MTA proposal

2.2.3 Undertaxed Profit Rule

The Undertaxed Profit Rules (UTPR) are implemented in Section 43-46 in the MTA. The UTPR works as a backstop to the Income Inclusion Rule and in cases where a MNE Group does not have any Constituent Entities in jurisdictions with a qualified Income Inclusion Rule, then the UTPR will distribute the Top-up Tax between jurisdictions with a qualified UTPR.

Denmark has chosen to implement the UTPR through an equivalent adjustment levied as an additional tax. [10]

2.2.4 Qualified Domestic Minimum Top-up Tax

The Qualified Domestic (Minimum) Top-up Tax rules (QDMTT) are implemented in Section 47-50 of the MTA. The QDMTT are intended as a national protection of the tax base, as the jurisdiction can, with the implementation of a QDMTT, have priority on the Top-up Tax. The Model GloBE Rules refers to it as a Qualified Domestic Minimum Top-up Tax, while the EU-directive refers to it as a Qualified Domestic Top-up Tax, the Danish translation has taken inspiration from the EU-directive.

2.2.5 Excluded entity

The rules on excluded entities are implemented in section 2. An excluded entity can be a plethora of different entities such as a public entity, an international organisation, or a non-profit organisation. If an entity is deemed to be an excluded entity, then the Minimum Taxation Act is not applicable on the entity.

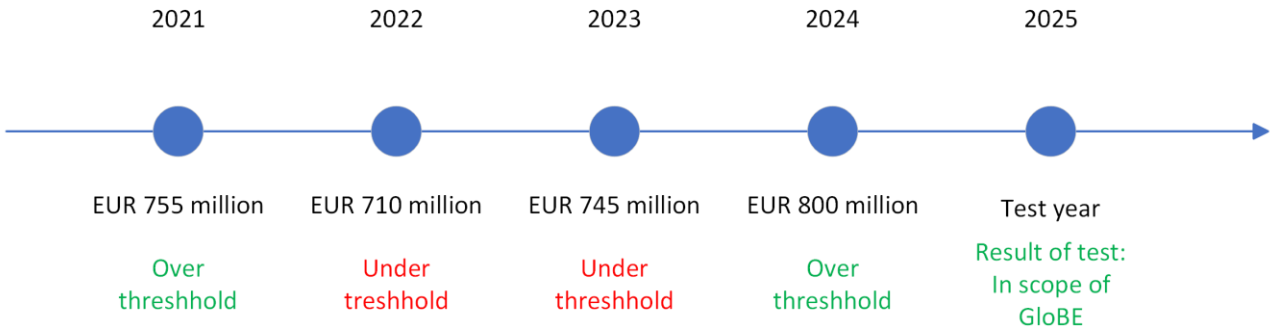
3. Calculation of the Jurisdictional Top-up Tax

This paragraph will elaborate on the Minimum Taxation Acts main functionality from which corporations are in scope, what type of information is needed to perform the calculations and a step-by-step exposition of the calculation to reach at the result on whether an entity is to pay a Top-up Tax and if so, how much.

[10] Cf. pp. 41 of the MTA proposal

3.1 In-scope Multinational Enterprise Groups

The basis for the calculation of the Jurisdictional Top-up Tax is to first identify the Multinational Enterprise Group (MNE Group) and find out whether it is in scope. For a MNE Group to be in scope, it must have had a revenue of at least 750 million euro in two of the following four fiscal years immediately following the tested year cf. section 1. The revenue include revenue from excluded entities, such as but not limited to, non-profit organisations and investment funds cf. section 2(1)[11], and if the MNE Group is a majority shareholder of 55 % of a Constituent Entity, with a revenue of e.g., 100 million euro, the MNE Group are to include the full amount of the revenue, and not a percentage relative to the shareholder part.[12]



Once the MNE Group has been identified as in scope, the next step is to identify the constituent entities of the MNE Group, as well as its location cf. section 5. A constituent entity is any entity that is part of a MNE Group, as well as permanent establishments which are included in a main entity, which is part of a MNE Group. The general rule is that the constituent entity is located in the place where it is liable to tax, either based on its place of management, place of creation or similar.

The Top-up Tax must be calculated on a jurisdictional basis cf. section 29 and the Ultimate Parent Entity (UPE) are to calculate the Effective Tax Rate (ETR) for each individual jurisdiction, combining all the constituent entities data with a tax liability in the jurisdiction.

[11] Pp. 53 of the MTA proposal

[12] Paragraph 11 1st and 2nd sentence in chapter 1 of the commentary the Model GloBE Rules.

The ETR is calculated based on the Adjusted Covered Taxes divided with the GloBE income of the constituent entity in the jurisdiction cf. section 28(1) 2nd sentence. The next step is to calculate the GloBE income or loss.

3.2 Calculation of the GloBE income or loss

The starting point for the calculation of the GloBE income or loss is the financial statements used in the preparation of the consolidated financial statements cf. section 12, then adjust the GloBE income or loss cf. section 14-20. Some of the adjustments are made in relation to certain industries, such as global shipping industry cf. section 14, but the adjustments are also mostly in relation to the permanent differences between the financial accounts and the taxable income, such as excluded dividends cf. section 14(1)2), but there are also adjustments that are made based on the policies of the GloBE rules, such as the treatment of bribes and fines cf. section 14(1)9).

3.2.1 GloBE Adjustments

To illustrate the adjustments in the GloBE income or loss, below will be an example including excluded dividends and disallowed expenses.

In the case of the excluded dividends cf. section 14(1)2) an example is that the parent company "Rockwool A/S", which has three subsidiary constituent entities in Hungary in which one of these is called "ROCKWOOL Hungary Kft." This constituent entity has a net income of 485.229.139 DKK (24.506.522.000 Ft)[13] and in the case where the constituent entity owns a subsidiary with more than 10 % of the shares and receives a dividend of e.g., 10.000.000 DKK. The constituent entity is to adjust the net income from 485.229.139 DKK to 475.229.139 DKK. Continuing with another example of the GloBE income or loss calculation and in the case of the disallowance of expenses such as fines, bribes, and kickbacks. Say that the constituent entity has paid 1 million DKK in fines and 2 million DKK in bribes and that the constituent entity is in a jurisdiction that allows deduction of

[13] Cf. https://www.nemzeticegtar.hu/rockwool-hungary-kft-c1909060041.html

this. This means that the disallowance of expenses is to be added back to the GloBE income or loss, meaning that 475.229.139 DKK would be adjusted to 478.229.139 DKK.[14]

Net Income	Adjustment	485.229.139
Adjustment – excluded dividend	-10.000.000	475.229.139
Adjustment – disallowed expenses	+3.000.000	478.229.139
Final GloBE Income		478.229.139

3.2.2 GloBE Elections

Section 16 of the MTA states that the constituent entity has a couple of options on the way to calculate the GloBE income or loss. E.g., the constituent entity can choose to use the realization method for assets and liabilities. There are multiple elections that the constituent entity can choose from, but equal for all of them are that when it is chosen, the choice is locked for either 5- or 1-year cf. section 54(1) and (2).

3.2.3 Permanent Establishments and flow-through entities

Generally Permanent Establishments is more of a tax concept than an accounting concept, and in regard to the GloBE calculation it is therefore important to treat the income or loss as its own constituent entity or included under a main entity. This depends on factors such as if there is only a permanent establishment in the jurisdiction, if the permanent establishment conclude separate financial accounts and the domestic tax legislation cf. section 17.

Flow-through entities often conclude separate financial accounts and therefore could document a Financial Accounting Net Income or Loss. However, as they are categorized as flow-through entities, they are known to not have a taxable income, as income or loss is forwarded to the owners of the flow-through entity cf. section 18 and 19.

[14] This is an explanatory example to show the adjustments made, as it is not possible for someone outside of the entity or the tax authority to have access to the data points necessary.

3.2.4 Deductible dividends

In section 20, the provision allows Ultimate Parent Entities, who according to domestic legislation, can deduct dividends, to deduct this from the GloBE income or loss calculation. For Denmark this is relevant for foundations, but also cooperatives such as Arla where the dividend is seen as a discount and not an income, but also the cooperative stores. The national legislation conducts a taxation on the capital/assets and not the income.

3.2.5 Final GloBE income or loss

After the adjustments are made under section 14-20, the income or loss from the financial accounting are not converted to a GloBE income or loss. If there are more constituent entities or permanent establishments in the jurisdiction, the GloBE income or loss are to be added, as the effective tax rate are calculated on a jurisdictional basis cf. section 28(1).

3.3 Calculation of Adjusted Covered Taxes

3.3.1 Definition of Covered Taxes

To calculate the Adjusted Covered Taxes, the basis of the calculation is defined in section 21(1). As there is no international agreed definition on what a corporate income tax is, it is defined as being a general tax on a cashflow or cash value, however it also contains a catch all provision, that is applicable in all cases where "taxes are imposed in lieu of a generally applicable corporate income tax" cf. section 21(1)3). As mentioned above, under the GloBE income or loss, the covered taxes are also intricately connected to the taxes recorded in the financial accounts.

Section 21(2) continues with negative definition of what is not a covered tax. Taxes paid under the IIR, QDMTT or the UTPR are excluded cf. section 21(2)1), 2) and 3) as otherwise there would be circularity.

3.3.2 Adjustment of covered taxes

The basis of the adjustment of covered taxes is the current taxes recorded in the financial accounts as well as the deferred taxes.

The general rule under the adjustment of the covered taxes is that if the basis of the taxation is excluded in the GloBE income or loss, then also the taxes should be excluded in the adjustment of covered taxes, so there is a form of matching principle in relation to the GloBE income or loss and the adjusted covered taxes for the calculation of the effective tax rate.

Many of the adjustments made to the covered taxes are in relation to timing differences cf. section 23 and 24, allocation of taxes from one constituent entity/permanent establishment to another cf. section 25 or in relation to post-filing tax adjustments cf. section 26.

The adjustment of covered taxes is especially important to the commercial foundations, as the Foundation Taxation Act, contains a section 4(1), where the commercial foundations are allowed to deduct the charitable and public benefit distributions in its income, which could result in a taxation rate below the minimum tax rate of 15 %.

The adjustment of taxes is important, so that the effective tax rate for the jurisdiction is calculated correctly for the year. An example of adjustment of covered taxes in relation to allocation of covered taxes, cf. section 25(5)(6) could be that Danfoss A/S located in Denmark has a subsidiary in Ireland which it owns with 100 % of the shares. The corporation income tax in Ireland is 12.5 %.[15] In 2022, the subsidiary has a GloBE income of 100 DKK and corporation income tax of 12.5 DKK (12.5 %). The Subsidiary distributes a dividend of 20 DKK out of the undistributed profits from previous years, which is subject to a withholding tax of 25 %.

The withholding tax on dividends shall be allocated to the jurisdiction where the constituent entity performing the dividend distribution is located. So, in this example the subsidiary in Ireland must also include the 25 % of 20 DKK (5 DKK) in its adjusted covered taxes. So, while initially it looked like that the subsidiary had an effective tax rate

[15] https://stats.oecd.org/Index.aspx?DataSetCode=CTS_CIT

of 12.5 %, the calculation will include the withholding tax of the dividend of 5 DKK so there is a GloBE income of 100 DKK and adjusted covered taxes of 17.5 (12.5 in corporate income tax and 5 DKK in allocated withholding tax) and the effective tax rate will amount to 17.5 % and not subject to a top-up tax.

The constituent entity has now calculated the GloBE income or loss and the adjusted covered taxes, which are required to calculate the effective tax rate. It is important to note that the effective tax rate is calculated on a jurisdictional level, and if there are multiple constituent entities and/or permanent establishments, the values are to be added together cf. section 28(1).

3.4 Calculation of the Effective Tax Rate

3.4.1. Calculation of the Effective Tax Rate

The calculation of the Effective Tax Rate is essential to determine whether jurisdiction is a Low Tax Jurisdiction cf. section 29(1) and therefore is subject to a top-up tax.
As the calculation is done on a jurisdictional basis, it is important to include the GloBE income or loss from all entities in the jurisdiction, to get the Net GloBE Income cf. section 28(2).

$$Net\ GloBE\ Income\ = GloBE\ Income\ of\ all\ Constituent\ Entities - GloBE\ Losses\ of\ all\ Constituent\ Entities$$

If the Net GloBE Income is 0 or negative, the continuation of the calculation will stop, as it will not be possible to compute the Top-up Tax.[16]

The calculation is relatively simple in the sense that the Adjusted Covered Taxes is the numerator, and the Net GloBE Income is the denominator.

$$Jurisdictional\ Effective\ Tax\ Rate = \frac{Adjusted\ Covered\ Taxes}{Net\ GloBE\ Income}$$

[16] Pp. 116 in the Commentary to the Model GloBE Rules.

Now the jurisdictional effective tax rate is calculated, and the calculation of the Top-up Tax can continue.

3.5 Calculation of the Top-up Tax

3.5.1 Calculation of the Top-up Tax percentage

The minimum tax rate is set to be 15 % cf. section 4(1)15), and to calculate the Top-up Tax rate, the difference is determined as follows.

$$Top\ up\ tax\ \% = Minimum\ Tax\ Rate - Jurisdictional\ Effective\ Tax\ Rate$$

Now we have the Top-up Tax percentage and will need to find out what this percentage should be multiplied with cf. section 29(2). According to the provision, the Jurisdictional Effective Tax Rate is to be multiplied with the Excess Profits. The Excess Profits is essentially the GloBE Income excluding the Substance-based Carve Out under section 30 of the MTA. The Substance-based Income Exclusion under section 30 is to exclude substantive activities so that the GloBE can focus on excess income stemming from for example intangible assets, such as intellectual property and goodwill. The substance-based activities are excluded from the income are payroll and tangible assets cf. section 30 (1). The substance-based carve out is limited to 5 % of payroll expenses and carrying value of tangible assets, but with a 10-year transition period with tangible assets starting at 8 % and payroll expenses at 10 %.

$$Excess\ Profits = GloBe\ Income - Substance\ Based\ Carve\ Out$$

To ease the burden of the MNE Groups and the tax administrations the OECD has agreed on a De Minimis rule, where the Top-up Tax can be set to 0, if both the accumulated revenue and income of the jurisdiction doesn't surpass respectively 10 million euro and 1 million euro cf. section 32(1).

With both the Top-up Tax percentage and the Excess Profits, it is possible to calculate the Jurisdictional Top-up Tax.

$$Jurisdictional\ Top\ up\ tax = Top\ up\ tax\ \% * Excess\ Profits$$

3.5.2 Top-up tax collection calculation

Once it is determined whether the effective tax rate is below the global minimum tax on 15 %, the top-up tax will be collected with either the QDMTT, IRR or the UTPR. For this there is an agreed order to which regulation has the right first to collect taxes.

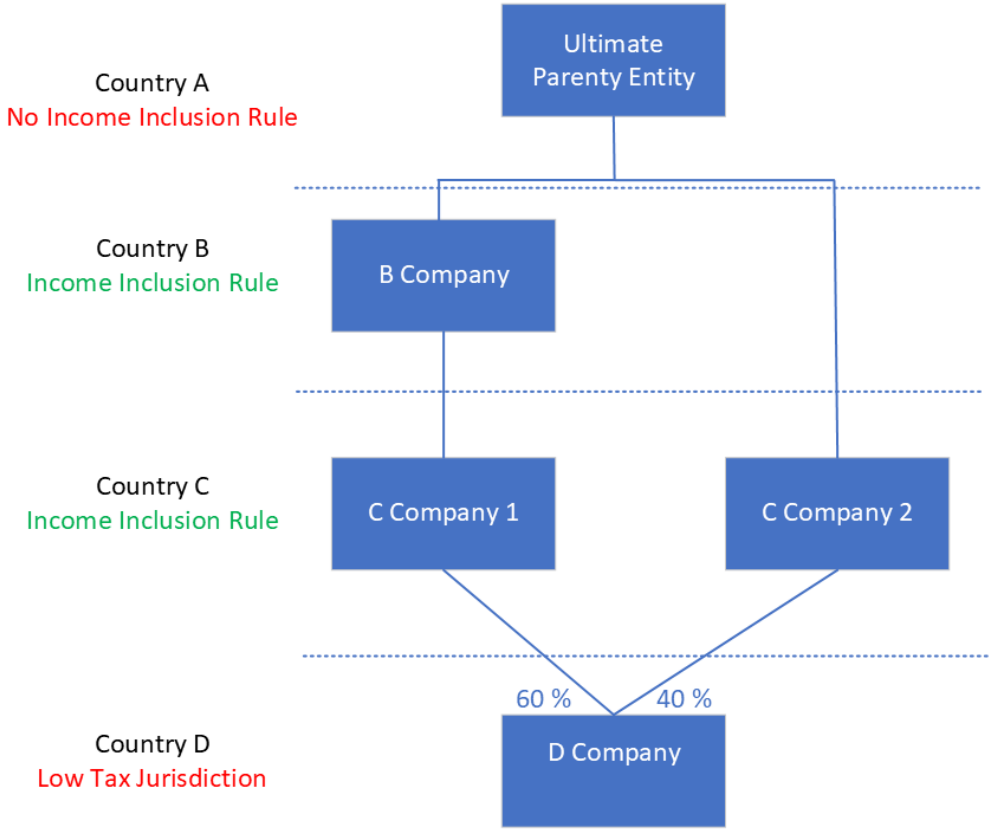
The priority goes to the jurisdiction where the low taxed profits have originated from, which can Top-up Tax the Low Taxed Constituent Entity through the Qualified Domestic Minimum Top-up Tax. This is also seen in the formula, below as it is extracted before calculation of the Jurisdictional Top-up Tax.

$$Jurisdictional\ top\ up\ tax = (Top\ up\ Tax\ \%\ x\ Excess\ Profit) - Qualified\ Domestic\ Top\ up\ Tax$$

Which means that in the calculation of the Jurisdictional Top-up Tax, the MNE Group must check if the jurisdiction has a QDMTT in the domestic legislation, and if the jurisdiction does have a QDMTT it must reduce the amount of Jurisdictional Top-up Tax with the amount of the QDMTT.

3.5.3 Income Inclusion Rule

If the jurisdictions do not have a QDMTT (or if the QDMTT doesn't tax the complete difference between the ETR and the minimum tax rate), then it is possible for the UPE of the constituent entity to apply the Top-up Tax through the IIR. If the UPE is located in a jurisdiction which haven't introduced the IIR, then it is possible for the next highest entity in the MNE Group, which is located in a jurisdiction with a qualified IIR, using a top-down approach as shown in the example below.



In this example, the MNE Group consists of an UPE with 4 constituent entities in 4 jurisdictions. As shown in the figure above, the UPE is located in a jurisdiction where the Income Inclusion Rule has not been implemented, and therefore the Top-up Tax cannot be collected in this jurisdiction. According to section 7(1) of the MTA, the Intermediate Parent Entity are to calculate and collect the tax of a Low Taxed Constituent Entity, unless the Ultimate Parent Entity is located in a jurisdiction with an Income Inclusion Rule cf. section 7(2). In the example above, this means that the Ultimate Parent Entity are not to calculate and collect the IIR for D Company, but this responsibility falls on the next Intermediate Parent Entity in the hierarchy. In this specific example, this would be B Company as they are located in Country B which has implemented the Income Inclusion Rule, however B Company only owns 60 % of D Company and therefore must only calculate and collect 60 % of the Top-up Tax cf. section 10(1). This means that C Company 2 are obliged to calculate and collect 40 % of the Top-up Tax on behalf of the Low Taxed Constituent Entity D Company.

3.5.4 Undertaxed Profits Rule

In cases where the Income Inclusion Rule cannot be applied through the MNE Group, the Top-up Tax is collected through the Undertaxed Profits Rule. The allocation of the undertaxed profit is done with reference to a substance-based allocation key on all the jurisdictions that has implemented the Undertaxed Profits Rule. The Undertaxed Profits Rule work as backstop to the Income Inclusion Rule and collects the taxes that has not been collected through the Qualified Domestic Minimum Top-up Tax or the Income Inclusion Rule.

According to the OECD Model GloBE rules, the Undertaxed Profits Rule can be implemented as a denial of deduction or an equivalent adjustment. Denmark has chosen to implement it using an equivalent adjustment through a tax cf. MTA section 43(1).

The Undertaxed Profits Rules are only applicable to the amount of Top-up Tax which has not been collected through the Income Inclusion Rule. So, if an MNE Group owns an Intermediate Parent Entity in a Jurisdiction which has implemented the Income Inclusion Rule, and this Entity owns 50 % of a Low Tax Constituent Entity with a calculated Top-up Tax of 500. Then the 50 % of the 500 (250), will be collected through the Income Inclusion Rule in that jurisdiction, and the remaining 250 of Top-up Tax are to be collected through the Undertaxed Profit Rule cf. section 44(4) of the MTA. The distribution of the Top-up Tax is done on the individual MNE Group and is distributed with reference to the number of employees and value of tangible assets in the jurisdiction cf. section 45(1) of the MTA.

4. Danish Foundations in relation to the Minimum Taxation Act

4.1 Introduction to the Danish Foundations

Danish foundations can, internationally, appear like the concept of “trusts” in common law countries. Foundations in Denmark can both be commercial and non-commercial. The foundation must have one of more specific purposes, which are to be formalised in the “instrument of foundation”, similar to a charter or trust deed. The management of the trust

must be sovereign and independent, and the assets of the foundation must be permanently and irrevocably separated from its previous owner cf. Act on Commercial Foundations section 1(2).[17]

4.1.1 Introduction to the Danish Commercial foundations

In Denmark a lot of the MNE Groups has created company structure where the Ultimate Parent Entity in the Group is a Commercial Foundation or Foundation. As seen in the table below, many of the largest corporations in Denmark has a Commercial Foundation as the Ultimate Parent Entity or a large Parent Entity.

Commercial Foundation	Operating Business	EBT (DKK)	EAT (DKK)
A.P. MØLLER OG HUSTRU CHASTINE MC-KINNEY MØLLERS FOND TIL ALMENE FORMAAL	A.P. Møller Holding A/S	78.274.500.000	78.274.500.000
Bitten og Mads Clausens Fond	Danfoss A/S	4.860.000.000	3.693.000.000
Carlsbergfondet	Carlsberg Group	-160.169.000	-160.169.000
Egmont Fonden	Egmont International Holding A/S	67.132.000	61.595.000
NOVO NORDISK FONDEN	Novo Holdings A/S	57.854.000.000	44.644.000.000
Lundbeckfonden	H Lundbeck, ALK, Falck, Ferrosan Medical Devices	7.744.000.000	6.928.000.000

4.1.2 Distributions from Foundations

Although the commercial foundations, has the possibility to distribute to non-charitable and non-public benefits, such as to family members of the founders of the foundation. In the instrument of foundation, it is clearly stated what the foundation can distribute to. This can either be to charitable or non-charitable purposes only, or it can be a mix.

[17] When referenced in this thesis the words foundations and commercial foundations is interchangeable.

A lot of the distributions are relatively significant. As an example, the Foundation "A.P Møller and Hustru Chastine Mc-Kinney Møllers fond til almene formaal", donated 2.400.000.000 DKK in the form of an opera house in 2004[18] and 1.000.000.000 DKK to the Danish primary school system in 2013.[19] Another example can be Steno Diabetes Center in Copenhagen to the value of 1.792.000.000 DKK given to the municipality or the Center for Biosustainability to the value of 1.319.050.000 DKK given to the Technical University of Denmark by the Novo Nordisk Fonden.[20] A collective group of foundations stated under the hearing period, that the accumulated amount of charitable and public benefits was more than 25.9 billion DKK in 2021.[21]

The tax-exempt distributions are therefore quite significant, in relation to the Danish economy and has a considerable influence on Denmark and its association life.

4.1.3 Introduction to the Foundations Tax Act

The Danish model for taxation of foundations and certain associations is provisioned in Act on Taxation of Foundations and Certain Associations (FTA) and could be seen as atypical.

The taxation model refers to the normal legislation for taxation of corporations cf. section 3(1) in the FTA, where the foundations are to assess the taxable income according to the Corporation Tax Act (CTA) section 8(1). Once the taxable income has been calculated with reference to the CTA, the foundation can deduct any amount which is paid out or provisioned for a future pay out up to 5 years cf. section 4(3) and (4) of the FTA, in respect of charity or public benefit cf. section 4(1) in the FTA.

[18] https://www.apmollerfonde.dk/projekter/operaen/

[19] https://www.apmollerfonde.dk/folkeskoledonationen/

[20] https://novonordiskfonden.dk/bevillingslister/

[21] https://www.ft.dk/samling/20231/lovforslag/L5/bilag/1/2758598.pdf pp. 4

For Danish foundations, it is also possible to exclude dividends from the taxable income, under the CTA section 13(1) in CTA cf. Section 10(1) in the FTA. In other words this means that if the foundation is a Ultimate Parent Entity and has a subsidiary company where the majority of the income is generated, and the subsidiary company is part of the MNE Group and it pays out a dividend to the UPE Foundation, then it is exempt from withholding the dividend taxation at the subsidiary company, as it is expected that the UPE foundation will pay taxes on the income from the subsidiary company. In relation to the Foundation Tax Act, the foundation can then distribute this dividend to a charitable or public benefit and deduct it from its taxable income and in essence reach an effective tax rate of 0 percent.

An effective tax rate of 0 percent could be a problem in relation to the Minimum Taxation Act, as Denmark would be forced to tax the Danish foundation a Top-up Tax or surrender the taxing right to another jurisdiction.

4.2 The Danish implementation of the EU Directive / OECD Model GloBE Rules

The following paragraphs will be an assessment of the Danish implementation of the EU Directive and OECD Model GloBE Rules, the Minimum Taxation act, in connection with the Danish taxation of foundations.

The assessment is done on the following parameters:

- Notes on the general implementation
- The implementation of the excluded entities in section 2(1)3) and 2(2)
- The implementation of the definition in relation to non-profit organisations in section 4(1)11)

4.2.1 Notes on the general implementation and interpretation of the legislation

In both the EU directive[22] and the Danish legislative proposal[23], it is reiterated that the legislation is framed, and to be implemented, as close to the OECD Model GloBE Rules as possible.

The reasoning behind this, according to the EU, is that the legislation is interjoined with other jurisdictions implementation of OECD Model GloBE Rules and therefore it is essential that for example a Qualified Domestic Minimum Top-up Tax can be "Qualified" as one in relation to the Model GloBE Rules. The consequences are, that if a QDMTT is not drafted close enough to the Model GloBE Rules, and therefore not "Qualified", then the other jurisdiction does not have to account for it under the Top-up Tax collection and therefore the jurisdiction can apply a Top-up Tax under the IIR or UTPR.

$$Jurisdictional\ top\ up\ tax = (Top\ up\ tax\ \%\ x\ Excess\ profit) - Qualified\ Domestic\ Top\ up\ Tax$$

As reference see paragraph 3.5.2 on the Top-up Tax Collection, where the QDMTT has priority over the IIR and the UTPR. Worst case would be that this could lead to a double taxation due to a Regular Corporation Tax (if any) and an Unqualified Domestic Minimum Top-up Tax in the country of residence, and a Top-up Tax in the form of an Income Inclusion Rule or Undertaxed Profit Rule.

Furthermore, it is very likely that the Inclusive Framework on BEPS and the OECD are to incorporate peer reviews to establish whether the legislation is implemented according to the standard, as is seen with the Exchange of Information on Request, Automatic Exchange of Information, Mutual Agreement Procedures and Country-by-Country, which is administered by the subdivisions of OECD, The Global Forum and the Inclusive Framework on BEPS. Common for them all, is that the OECD is establishing a secretariat to complete peer reviews, but it is the members of the organisations which are conducting and examining the legislation, administration, and general implementation.

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[22] Cf, para, 6 of the Council Directive 2022/2523 of 14th December 2022

[23] Pp. 41 last two paragraphs MTA Proposal

In order to have more than 130 jurisdictions to agree in a peer review, it is deemed beneficial to have the Danish implementation of the legislation as close to the OECD text as possible.

The EU Directive and the Danish legislative proposal has also explicitly stated in the commentary to the legislation[24], that it is to be interpreted as close to the OECD Model Rules as possible, including the Agreed Administrative Guidelines and the Explanatory Examples. The commentary makes the reference to the precedent of the Transfer Pricing Guidelines, where Denmark in the commentary to the Danish Tax Assessment Act section 2, states that the arm's length principle, must be interpreted in accordance with Article 9 of the OECD Model Tax Treaty and the Transfer Pricing Guidelines.

On these conclusions, it is considered very appropriate that Denmark is implementing and interpreting the legislation as closely as possible. This poses a new set of problems for the implementing jurisdictions, as it is not possible to adjust the legislation to suit the jurisdictions domestic legislation. For Denmark, this can be a problem in relation to the taxation (or lack thereof) of foundations.

4.2.2 The implementation of the excluded entities under section 2(1)3) and 2(2)

As mentioned under paragraph 4.1, Denmark has a lot of large MNE Groups structured in a way where the Ultimate Parent Entity is a foundation, which possibly could be categorised as a non-profit organisation as listed in the Model GloBE Rules under Article 1.5.1 (c) as an excluded entity.

Therefore, the initial place to examine is the implementation of the Excluded Entities under section 2. The majority of the section in the Danish legislation closely follow the wording of the Model GloBE Rules, including the commentary.

While the wording of the legislation is similar, question is if the interpretation and definitions of the wording is either broad enough to allow the Danish foundations to count

[24] Pp. 42 2, 3 and 4th paragraph MTA Proposal

as non-profit organisations, or if it is too narrow and they cannot be excluded entities under section 2(1)3). This question will be reviewed under paragraph 4.2.3 and 5.1.

The Ministry of Taxation has decided to add another subsection (2) under section 2 between the hearing period and the parliamentary proposal. The new subsection 2(2) can be seen below. The Ministry references in the commentary to the new subsection, that this is taken from the commentary to article 1.5.2 in the Model GloBE Rules 54.1-54.4, which was added in a new Agreed Administrative Guidance published on 17th of July 2023.[25]

(2) An entity, in which the entire value of the entity is either directly or indirectly owned by one or more entities mentioned in subsection (1)3) shall be regarded as an exempt entity under subsection (1)7), litra (b), even if it does not meet the activity condition, if the total revenue of all entities in the group with the exception of entities covered by subsection (1)3), 7) litra a and 8) and entities meeting the activity condition in subsection (1)7) litra b is less than EUR 750 million. The threshold in the first sentence is reduced to 25% of the group's total revenue, if the group's total revenue is less than EUR 3 billion euro.

The implementation of this section is to explicitly deem entities, which are generating income and directly or indirectly re-directing the profit to the non-profit organization in charge of the distribution to charitable or public benefit, as an excluded entity. It could create a problem as the subsidiaries can deduct the dividend paid to foundations with a charitable or public benefit cf. section 3(4) of the Corporation Tax Act.

The Danish Corporation Tax legislation, as well as many other jurisdictions tax legislation, works with a principle, where a parent company can receive a dividend from a subsidiary company, without the subsidiary company being subject to a withholding dividend tax under certain requirements in the CTA Section 13. This is under the pretence that the parent company will be taxed on their total income, including dividends from subsidiaries. In relation to the foundations, the foundations can then deduct the distributions given to charitable and public benefits and be taxed on the remaining taxable amount (if any). This was not a problem in the international world of taxation pre-GloBE Rules

[25] Pp. 28 and 29 https://www.oecd.org/tax/beps/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf

With the addition to the proposed MTA, the foundations, where some are UPE's and deemed as a non-profit organisation is an excluded entity. This does include that the subsidiary entity, which is doing activities on behalf of the foundation, is excluded.

This requirement trickles down the ownership-chain as it is required to own 100 % of the subsidiary for it to be an excluded entity and specifies that holding and ancillary activity subsidiaries of non-profit organisations are also to be excluded entities.

The new subsection is not stated in the Model GloBE Rules, but in an Agreed Administrative Guidance, which Denmark has decided to explicitly state in the legislation. It can be assumed that the Danish Implementation of the Model GloBE Rules is still in line.

4.2.3 The implementation of the definitions in relation to non-profit organisations in section 4(1)11)

As mentioned under paragraph 4.2.1, Denmark is expected to follow the text of the Model GloBE Rules relatively close. The EU Directive is almost identical to the Model GloBE Rules, except for a small change where last sentence of the definition to "non-profit organisation" under article 10(1) is changed to a litra f under the EU directive. The Danish implementation of the EU directive is also identical, albeit translated to Danish. However, a change from the draft under the hearing period, and the parliamentary proposal L5, a small change was added to section 4(1)11) litra b as follows:

b) ~~Praktisk taget~~Næsten hele indkomsten fra de i litra a omhandlede aktiviteter er fritaget for indkomstskat i den jurisdiktion, hvor den er hjemmehørende.

(b) ~~substantially~~ Nearly all of the income from the activities mentioned in paragraph (a) is exempt from income tax in its jurisdiction of residence;

In both the OECD and the EU Directive the "Substantially" is used and the Ministry of Taxation has decided to change from the Danish word "Praktisk taget" (Practically) to "Næsten" (Nearly/almost). It could seem like a deviation from the original text, but in a response to the hearing statement, the Ministry of Taxation, has made a reference to the expression "substantially all of" used in the Model GloBE Rules. In this regard, it is most likely not a deviation from the Model Rules, but just a more descriptive translation. This is also a fair assumption as it has been mentioned in paragraph 4.2.1, that the legislation is to

be read and interpreted as close to the EU directive and OECD Model GloBE Rules as possible.

A big topic during the hearing period of the legislation was whether Danish foundations would be excluded from the MTA cf. section 2(1)3) as they would be defined as non-profit organisations. A group of Danish foundations (Mærsk, Danfoss, Lundbeck, etc) Danish Industry (DI), The trade organisation of Danish Auditors (FSR) and KPMG Acor Tax all voiced their concerns to the Danish Ministry of Taxation during the hearing in regard to the potential problems on the implementation of the Minimum Taxation Act in relation to the Foundations Taxation Act.[26]

The Danish Ministry of Taxation has in their response to the hearing statements, mentioned that they have tried to incorporate a bit more guidance in the commentary, on for example which type of charitable and public benefits that is encompassed in the legislation as well as the type and extend of business that a Commercial foundation can do to achieve a status as a non-profit organisation.

With the use of tracked changes in word, it is possible to see the changes to the commentary to section 4(1)11) litra a below.

> The proposed litra a will entail that there will be a requirement that the entity is established and operated solely to fulfil the purposes listed in the provision. It will depend on a specific assessment of whether an entity fulfils litra (a), based on the entity's purpose is established and. For e.g. a charitable foundation, the assessment of why it is established will typically be based on the foundation's charter, articles of association or similar documents where the purpose of the foundation is stated. The assessment of how it is operated will have to be made on the basis of the actual operation of the foundation.
>
> In this context, it is important to distinguish between the foundation's activity purpose, e.g. ownership of a group, and the distribution purpose, i.e. the foundation's utilisation of profits and reserves. The latter purpose must be regarded as an expression of what the foundation's activity is intended to fulfil, and therefore the relevant purpose in relation to litra a.
>
> A characteristic of the Danish non-profit commercial foundations is that they are taxed under the Danish Fund Taxation Act and typically own larger Danish groups via subsidiaries. This does not preclude a charitable foundation or other type of entity from qualifying as a non-profit organisation.
>
> The ownership of the group will typically be the foundation's activity purpose, which is to raise the funds to fulfil the foundation's distribution purpose. Thus, it also appears from the OECD comments that a non-profit organisation can be the ultimate parent entity of a multinational group.

[26] https://www.ft.dk/samling/20231/lovforslag/L5/bilag/1/2758598.pdf

The commentary to the section contained two larger changes which was not of technical character, the first is connected to litra a of section 4(1)11), where the Ministry of Taxation details what is necessary to be categorised as established and operating, for the purpose of charitable and public benefit. The Ministry clarifies that there is an "activity purpose" and a "distribution purpose" and that there is a division between the two. The activity purpose is explained that this is what the commercial foundation is utilising in order to be able to fulfil their distribution purpose, which is illustrated in the commentary, to own a group.

The distribution purpose is what the commercial foundation will commit the activity income to as listed in section 4(1)11) litra a. In the same paragraph, it is stated that it must "exclusively" distribute for charitable or public benefits. This could pose a problem for Danish Family Foundations where the instrument of foundation allows for distributions to non-charitable or non-public benefits.

In the ending of the commentary to 4(1)11) litra a, the Ministry has added the paragraph below.

> The concept of charitable purposes in the rules on minimum taxation does not necessarily coincide completely with the concept of charitable and non-profit purposes in section 4(1) of the Danish Foundation Tax Act, but it is estimated that there will be a very significant overlap between the two concepts. Therefore, if there is a deduction for the distribution according to the Danish Foundation Taxation Act, it will generally also be a charitable purpose according to the minimum taxation rules.

If the change to the commentary above is read very strict, this basically opens an opportunity for all foundations covered by the FTA, is also excluded cf. section 2(2)3) as a non-profit organization on this parameter.

4.2.4 Summary of the implementation of the Minimum Taxation Act relating to foundations

In brief, the Danish implementation of the Model GloBE Rules is relatively close in wording. The Ministry of Taxation has not strayed far away from the Model Rules, which was also recommended in the EU directive. The Ministry of Taxation has between the hearing and the parliamentary proposal added a new subsection stemming from an OECD Agreed Administrative Guidance, as well as a more detailed explanation of the interpretation in the commentary. However, the commentary is almost directly taken from the OECD commentary, which the legislation is already referring to for interpretation causes.

5. The Minimum Tax Act and Danish foundations

This topic will contain an examination of the problems foreseen under the Minimum Taxation Act in relation to the foundations, including whether the foundations can be seen as excluded entities cf. MTA section 2(1)3) and what the consequences will be for a foundation when the legislation enters into force.

5.1 Are Danish foundations exempt from the MTA legislation cf. section 2(1)3) under non-profit organisations.

As previously mentioned under paragraph 4.2.3, a big topic for the hearing parties was in relation to whether a foundation could be considered as a non-profit organisation. The conclusion that was reached in chapter 4, was that the Ministry of Taxation was relatively constrained by the words of the Model GloBE Rules and therefor had very little leeway to adjust relating to foundations.

Therefore, the next step of the thesis is to apply the proposed legislation on "a general and common commercial foundation in Denmark". To be considered an excluded entity cf. section 2(1)3) of the MTA, the foundation will be assessed on the definition of a Non-Profit Organisation cf. section 4(1)11) of the MTA.

5.1.1 Assessment of establishment and operation cf. litra a

The first requirement in section 4(1)11) litra a of the MTA, is that the entity must be established and operated in the jurisdiction of residence with the exclusive purpose of religious, charitable, scientific, artistic, cultural, athletic, educational, or other similar purpose. Furthermore, it can also be categorized as a professional organisation, business league, chamber of commerce, labour organisation agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare. As the foundation must both be established and operated for the distribution purposes, it is critical that the foundation is not "just" applying the distribution purposes according to the MTA section 4(1)11) litra a, it is critical for the assessment that the distribution purposes is established in the instrument of foundation. The distribution purpose must be both established and operated according to section 4(1)11) litra a.

To assess this for a foundation, it will be required to look at the instrument of foundation or charter. For a foundation to be recognized as a foundation, it is necessitated to register as such with the instrument of foundation and fulfil the requirements listed in Commercial Foundation Act section 1(2) as mentioned under paragraph 4.1.

As concluded under paragraph 4.2.3 and deduced from the commentary, there are normally two purposes for a foundation, first is the "activity purpose" and second is the "distribution purpose". What is meant by the purpose under litra a, is the distribution purpose.

An example could be the Danish Foundation "Rockwool Fonden", which is a parent entity of the Danish Group "Rockwool A/S". The foundation's instrument of foundation states the following regarding the distribution purpose.:

"The purpose of the Foundation is to support scientific, humanitarian, artistic or social purposes, and to contribute to the improvement of the environment and social development, as decided by the Board of Foundation."[27]

This distribution purpose is very broad; but it can easily be concluded that the established distribution purposes of the foundation are in line with the wording of litra a, as the words scientific, artistic, and social development are directly mentioned in both the legislation and the distribution purpose. It is furthermore the assumption that "humanitarian" and "improvement of environment" are within the interpretation limits of the legislations "other similar purpose".

Whether the foundation is operated within the scope of the established instrument of foundation is to be assessed on how the foundation is de facto operated. The example of Rockwool Fonden will continue.

[27] § 4 https://rockwoolfonden.s3.eu-central-1.amazonaws.com/wp-content/uploads/2023/08/RF-fundats-2011.pdf

From Rockwool Fondens report on distributions, it is reported that the board has decided to "*prioritise support for projects that aim to generate new, independent knowledge that can strengthen the economic and social sustainability of the welfare society"*[28] under the instrument of foundation. The foundation does not publicise a list of the distributions, and therefore it can be hard to assess it from the outside. A quick analysis of the publications on the foundation's website[29], it looks that supported scientific articles and publications are within the scope of the instrument of foundation.

It can be determined that Rockwool Fonden is both established and operated within the scope of section 4(1)11) litra a.

An important part for the interpretation of litra a, is that the foundation must be established and operated exclusively for the determined purposes. This is an argument which is not treated in article SR.2023.233 by Caroline Bormlund Thomsen. One of the intermediary conclusions which is reached under paragraph 3.1.1.1 in the article is that a charitable foundation or family foundation can meet the requirements, of course based on an individual concrete evaluation. It is possible to agree on the conclusion that charitable foundations can meet the requirement of being charitable, yet there is no line of reasoning on how a family foundation can be considered to meet the requirements under litra a, as the foundation must be established and operated exclusively for the purposes mentioned. None of the purposes stated in litra a, relate to family members or the like.

While Rockwool Fonden is established and operated within the scope of the litra a, a large amount of the Danish foundations could potentially not be[30]. An example of an instrument of foundation which might not be deemed as valid in relation to litra a could be the Danish foundation "Lundbeckfonden" which is the Ultimate Parent Entity of the Danish pharmaceutical group Lundbeck.

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[28] https://rockwoolfonden.dk/saadan-stoetter-vi/

[29] https://rockwoolfonden.dk/udgivelser/

[30] Foundations a not obliged to publish its instrument of foundation, and therefore it cannot be analysed in detail.

The instrument of foundation for Lundbeckfonden section 6[31], describes the distribution purpose of the foundation and in litra a of section 6, is mentioned that the foundation can distribute to a limited list of persons and their descendants in first line. This statute is not within the scope of section 4(1)11) litra a, and albeit section 6 litra c-i of the instrument of foundation are within the scope, it is not exclusively within the scope and therefore Lundbeckfonden could not be categorised as a non-profit organisation cf. MTA.

Continuing the analysis of the instrument of foundation, multiple Danish foundations has established their foundation in a way where they in their article of distribution purpose give priority to a corporation, usually the subsidiary or the subsidiaries of the subsidiary. An example of this is the "Poul Due Jensen Fonden (Grundfos Fonden)" which in article 3.1.1 states the following *"The objective of the Foundation shall be to contribute to the safeguarding and expansion of the financial foundation for the continued existence and development of a healthy, commercial and financial basis for the company created by industrialist Poul Due Jensen (Grundfos companies in various countries)".*[32] While this could be within the scope of the activity purpose, it is not deemed to within the scope of the distribution purpose. Notwithstanding there is a sort of circular logic to it. The better the operating company is doing, the more income it could generate for charitable and public benefit purposes. This article would likely entail that the foundation will not be recognised as a non-profit organisation. Another example of something similar is from "Bitten og Mads Clausens Fond" (Danfoss) which in article 5 states the following "*If the primary purpose of the foundation to safeguard DANFOSS A/S is fully realised and the foundation has good liquidity, the Board of Directors may, by simple majority, but with the approval of 2/3 of the members of board group a, decide to make distributions from the Fund's annual result, retained earnings from previous years and other reserves that are not restricted according to the instrument of foundation, including the available capital, after deduction of retained losses, to…".* [33] In this example, the foundation's purpose is to

[31] https://lundbeckfonden.com/files/media/document/2023%2003%2027%20Lundbeckfonden%20Fundats.pdf

[32] https://www.pdjf.dk/wp-content/uploads/2017/12/Fundats_Charter_PDJF_DA_EN_20150304_web.pdf

[33] https://www.bmcfond.dk/media/1428/fundats-rev-2606.pdf

secure the financial integrity of the operating company Danfoss A/S and next the liquidity of the foundation itself. According to the regulations of the MTA, it is allowed for the foundation to manage the assets of the foundation in order to secure a level of funds, however it is doubtful that the foundation will be allowed to conduct a high degree of business activity and still be considered as a non-profit organisation and thereby an excluded entity. See more under paragraph 5.1.6 on litra f.

As previously mentioned, under 4.2.3, the Ministry of Taxation has stated in the commentary to the legislation, that in essence all foundations covered by the Foundation Taxation Act will also be covered by the Minimum Taxation Act. A brief analysis on the legal precedent in regard to the Tax Council, the National Tax Tribunal and the Court cases, did not find examples of cases where a distribution purpose was deemed accepted according to the Foundation Tax Act, but possibly would not be allowed within the scope of the Minimum Tax Act. It was not possible to find cases where there would be an evident difference between the two legislations, see for example SKM.2003.15ØLR, where an instrument of foundation stated its distribution purpose was *"support for education, including supplementary education, of civilian commercial pilots, including private pilots seeking commercial education"*. It's assessed that this distribution purpose would be encompassed by the reference to "educational". See also SKM2010.276.BR, where a foundation was accepted as charitable and public benefit with a distribution purpose stating *"Support for self-employed carpenters who are members of the Carpenters' Guild and who, through no fault of their own, have run into financial difficulties, as well as people who have become disabled as a result of physical illness."* It's assessed that this distribution purpose would be encompassed by the reference to "charitable" in the legislation. The analysis was done within the timeframe of the thesis and therefore it cannot be precluded that legal precedent could be present. With this, a soft conclusion can be that this has yet to be brought before the council, tribunal, or courts to reach a judgment.

5.1.2 Assessment of exemption of tax cf. litra b

The requirement of litra b, is that nearly (a substantial amount) all the income relating to the activities under litra a, must be exempt of taxation in the jurisdiction of resident. In the article SR.2023.233 under paragraph 3.1.1.1 it's concluded that the entity must be objectively exempt from taxation and not subjectively, which is an agreeable conclusion.

The commercial foundations in Denmark are not tax exempt subjectively, as they are treated according to the regular taxation rules under the corporation tax act cf. FTA section 3(1) but allowed deduction for the charitable and public benefit distributions. Therefore, the commercial foundations can still be an excluded entity as a non-profit organisation. Previously argued, SR.2023.233 does not examine the exclusivity stated in litra a, and reached another conclusion than in paragraph 5.1.1, which also leads to a partly different conclusion here.

The requirement according to litra b is very connected to litra a, as if the distribution purposes is not encompassed under section 4(1)11 litra a, then the income will also not be exempt of taxes cf. section 4(1) of the FTA. With reference to paragraph 5.1.1, not only does the foundation have to be operated according to the listed distribution purposes, but the foundation also must be established according to the listed distribution purposes. Hence, it seems practically impossible to fulfil litra a, but not litra b.

According to section 4(3) and (4) in the Foundation Tax Act, the foundations can also set aside income and use the deduction in the current year, even though the distribution has not yet happened. Question is if funds which is set aside with an access to deduct in the future, is also considered as exempt of taxation. While looking in the supporting material as the commentary to the Danish implementation of the legislation and the OECD Model Rules it is not possible to answer this question more definitively. However, a strict literal interpretation of the legislation, supports the point that funds put aside for a future distribution, can be deducted in the current year, as the wording of regulation is that the income from the activities must be exempt from taxation, which they are.

Both the OECD and the Ministry of Taxation has not been able to give a more conclusive answer to what nearly (a substantial amount) all income is other than in the commentary to litra b, where it is stated that the evaluation will be individual and concrete, and that it can range over multiple fiscal years. This is consequently an item that is left for the case law to handle.

As a summary, it can be determined that there is a close connection with the requirements under section 4(1)11) litra a and litra b. The tax exemption in litra b is interconnected and dependant on the charitable nature of litra a.

5.1.3 Assessment of shareholders or other members with rights cf. litra c

Section 4(1)11) litra c of the MTA, states that foundation must have no shareholders or members, who have a proprietary or beneficial interest in its income or assets.

This is not a problem in relation to the commercial foundations in Denmark as the requirements under the Act on Commercial Foundations section 1(2), it is stated that *"no natural or legal person outside the foundation has ownership of the foundation's assets."*. The foundation is seen as a separate entity and does not have any shareholders or members with a proprietary or beneficial interest, and as stated under paragraph 4.1, the funds must be irrevocable separated from the founder.

According to section 1(1) no. 1 of the FTA, the regulations (and therefore the tax exemption) is only applicable to entities covered by the Act on Commercial Foundations.

5.1.4 Assessment of acceptable and unacceptable distributions cf. litra d

The section divided into two parts and acts as a safeguard rule, where the first part of the regulation is that a foundation cannot distribute income or assets to a private person or non-charitable entity. The second part is the exemptions to the first rule, where distributions can happen to private persons and non-charitable entities, as long as it is part of the distributions covered by the instrument of foundation, which is approved according to litra a. The commentary to the Model Rules uses the example "*where an Alumni foundation of a university is funding the education expenses of students that need aid".* Another exception is acceptable payment for services rendered or products purchased. Last exception is for payment at market value of a property which the entity has purchased.

The majority of the foundations examined, such as Lundbeckfonden, Novo Nordisk Fonden and A.P. Møller fonden, all articles in their instrument of foundation, the distribution purpose is for scientific, educational or charitable purposes. For example, Novo Nordisk Fonden has the following article § 2 *"to support physiological, endocrinological and metabolic research as well as other medical research*[34]*"* and Novo

[34] https://novonordiskfonden.dk/hvem-er-vi/vedtaegter/

Nordisk Fonden has distributed to a plethora of individual private persons for their field of study.[35] As long as the distribution purposes is charitable and for public benefit, the distributions can be given to private persons and non-charitable entities. This might be a problem for some of the family foundations as mentioned under paragraph 5.1.1, but as the requirements under section 4(1)11) is exhaustive and must all be fulfilled to be recognized as a non-profit organisation, the family foundations would already fall on the litra a requirement.

Article SR.2023.233 has treated the litra c and d as one coherent condition and reaches the conclusion on family foundations, that while in the instrument of foundation, the family members have a priority or privilege to receive a distribution, they do not have a legal right to the funds and therefore it lives up to the requirement under the circumstance, that the funds are irrevocable separated. With reference to the requirements under litra a, the foundation must be established in a way where it can only distribute for charitable and public benefit, it is not sufficient that the foundation operates for charitable and public benefit.

5.1.5 Assessment of termination, liquidation, and dissolution terms cf. litra e

Minimum Taxation Act section 4(1)11) litra e states that all assets must either be distributed or reverted to a charitable purpose or the government in case of termination, liquidation, or dissolution.

For a foundation in Denmark, it is to be stated in the instrument of foundation, what are to happen with the assets in case of termination, liquidation or dissolution inferred from section 1(2) in Act on Commercial Foundations, as the funds are separated and irrevocable. In relation to litra e, the instrument of foundation is to make sure that, in the event of termination, liquidation or dissolution, the assets can only be distributed to charitable and public beneficiaries or the government.

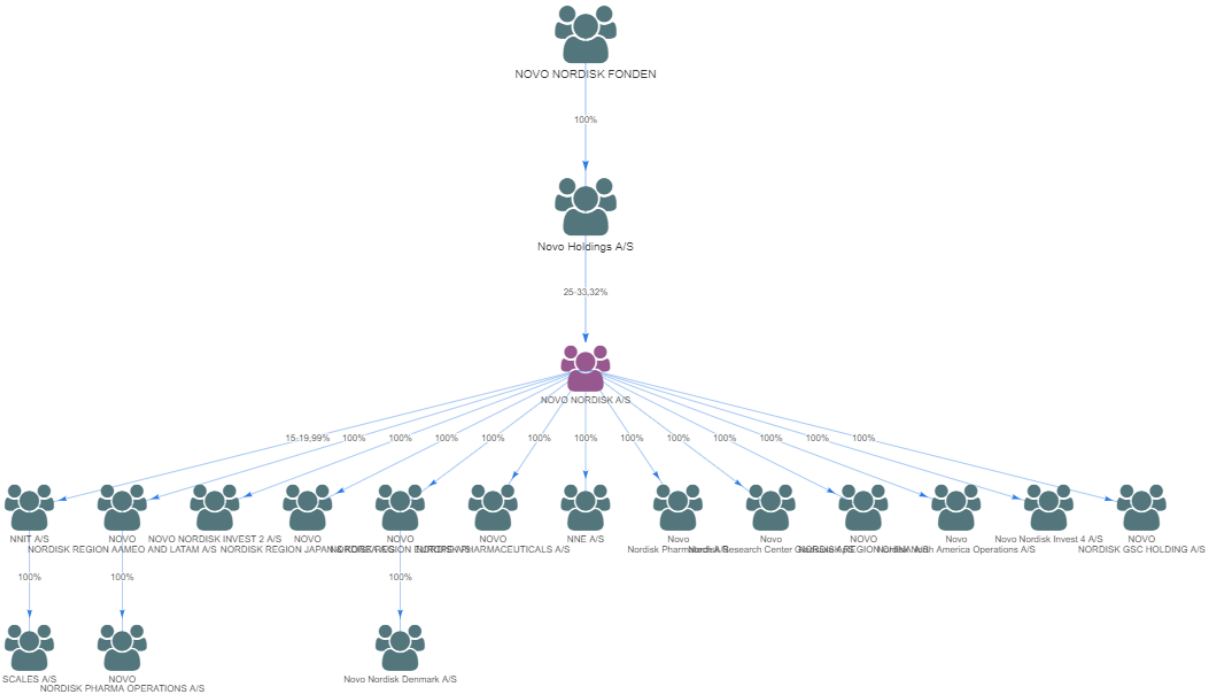
[35] https://novonordiskfonden.dk/bevillingslister/

A majority of Danish foundations will already fulfil this requirement. The question is if they fulfil the requirement under litra a.

5.1.6 Assessment of activity related to purposes cf. litra f

Litra f treats the limits of what a foundation can conduct as activity in relation to its definition as a non-profit organisation. It states that the foundations commercial activity must be related to its purpose.

It is recognised that a lot of non-profit organisations are Ultimate Parent Entities and that they therefore are obliged to conduct normal shareholder and investment duties as an asset manager, deduced from the reference to section 2(1)7, litra a of the MTA, where subsidiary companies of a non-profit organisation is also deemed an excluded entity.



It is common for some commercial foundations to have an intermediate company between the foundation and the operating company for different reasons. This could be to separate the more strategic and business-based decisions from the foundation and operating company, see the example of Novo Nordisk Fondens company structure. In this example the UPE foundation could focus on their activities in relation to the distribution purposes and leave the general asset management to the intermediary holding company. If the foundation is recognised as an excluded entity cf. section 2(1)3) of the MTA, then the intermediary holding company would also be recognised as an excluded entity cf. MTA section 2(1)7) litra a.

There is a limit to the extent of wealth and asset management that a non-profit organisation or subsidiary company can perform. In the commentary to the legislation, its stated that the entity can perform wealth and asset management which is similar to investment in portfolio stocks- and bonds, which does seem quite limiting for a company structure similar to Novo Nordisk Fonden.

Many of the instrument of foundations contain articles on how the foundation are to manage the assets. An example from "Velux fonden" is *"The fund's capital must be invested in treasury bills, government bonds, listed shares, loans to solid companies, deposits in banks or savings banks or other solid securities"*. This article is deemed to be within the scope of the litra f. Another example this time from "Poul Due Jensens Fond (Grundfos Fonden)" instrument of foundation article 7.1 is *"The distributable capital shall be raised in part through the Foundation's current income, whether interest and dividend income, together with income from business activities, and in part through inheritance or endowment for which no requirements have been made for these amounts to constitute contributed capital."*[36] In this case, the article contains a passage that references "business activities" among interest and dividend. If business activities were standing alone, the assumption would automatically be interest and dividend, but since it is listed separate it is ambiguous. It could become a problem for the foundation if they conduct business activities that go beyond the commentary's words as "similar to investment in portfolio stocks- and bonds.

Notwithstanding the requirements under litra a, the "Poul Due Jensen Fonden (Grundfos Fonden)", has in their instrument of foundation under article 3.1.1 last sentence incorporated the following authorisation for the board *"The Foundation's objective may be expanded to also cover companies which the board of directors in accordance with ordinary business-related standpoints finds reasonable to acquire either partially or wholly."*[37] The article in the instrument of foundation goes beyond the scope of business

[36] https://www.pdjf.dk/wp-content/uploads/2017/12/Fundats_Charter_PDJF_DA_EN_20150304_web.pdf

[37] https://www.pdjf.dk/wp-content/uploads/2017/12/Fundats_Charter_PDJF_DA_EN_20150304_web.pdf

activities stated in MTA section 4(1)11) litra f of "similar to investment in portfolio stocks- and bonds" as such investment would be more strategic, market competition oriented and not wealth management.

5.1.7 Conclusions on the assessment

In regard to litra a in section 4(1)11) of the MTA, it can be argued that Danish foundations, within scope of the 750-million-euro revenue, will need to have a look on whether the instrument of foundation will need a revision, so that they are within the scope of the section 4(1)11) litra a. Otherwise they could be unnecessarily taxed, if they allow for distribution to private persons and business'. Litra a is interconnected with litra b, fulfilling the requirements to establish and operate a charitable and public benefit entity, will also entail that the distributions are tax exempt. It is still up to case law to define more closely what is meant by "nearly all". Most of the requirements are also dealt with by the FTA, which already requires the foundations to not have shareholders or members, to work as a separate entity. Furthermore, the foundations must check the company structure and the activity purposes to make sure, that they are not operating the companies from the foundation.

A soft conclusion is that all of the requirements of MTA section 4(1)11) litra a-f are to be fulfilled, but from a short analysis of a few foundations, shows that many foundations may not be recognised as a non-profit organisation and therefore not an excluded entity, resulting in a possible Top-up Tax.

In order to avoid this, the foundations should review their instrument of foundation and make sure that it is suitable for the foundations structure and distribution purposes. Otherwise, the foundation could be subject to a Top-up Tax. This could be avoided by changing the articles in the instrument of foundation. It is possible to change the articles relating to purpose and distribution, but this requires the acceptance of the foundation authority and the Department of Civil Affairs cf. section 89(2) in the CFA. For commercial foundations, the foundation authority is the Danish Business Authority.

5.2 Treatment of foundations deemed excluded entities

This paragraph will examine the effects and consequences for a foundation which is deemed to be an excluded entity cf. section 2(1)3) of the MTA.

The foundation is established and operated as required by section 4(1)11) litra a-f of the MTA and therefore deemed an excluded entity. If the foundation has a directly 100 % owned subsidiary, where the activity purpose from section 4(1)11) litra a, is not fulfilled, the subsidiary entity will also be recognised as an excluded entity cf. MTA section 2(2) if the accumulated revenue of non-excluded entities are below 750 million euro.

Therefore, both the Ultimate Parent Entity, which is a foundation established with an instrument of foundation cf. section 4(1)11) litra a-f, and the subsidiary company, which is established with the purpose of founding the foundation, are excluded entities, and hence not encompassed by the Minimum Taxation Act cf. section 2(2). However, the first subsidiary company, which does not fulfil the requirements under section 2, are obliged to calculate the GloBE income or loss, Adjusted Covered Taxes, Effective Tax Rate, and the Top-up Tax.

This is also in line with article SR.2023.296 paragraph 2.2, albeit in the article it is referred to as that section 2(2) is not implemented in the legislation, but only referred to in its shape in the Model Rules and EU Directive. This might be because the article was written on the basis of the proposal when it was in public hearing, where the current section 2(2) was not present. See paragraph 4.2.2 on the changes from the hearing to the proposal. A lot of published articles undergo a long process of peer review and might be written well in advance of the L5 proposal. None the less, the author reached the same conclusion, albeit with a reference to the commentary's reference to the OECD Model Rules and the EU Directive.

6. Treatment of foundations deemed included entities

6.1 Top-up taxation calculation of foundations not considered an excluded entity

When a Danish foundation is recognized as an included entity, potentially because it is a mixed foundation, which can distribute to charitable and non-charitable purposes and therefore could be subject to a top-up tax. A consequence of the MTA is that the foundation can adjust its distribution amounts for charitable purposes, so that it is relative to the amount distributed for non-charitable purposes. This is possible due to the difference between the Minimum Taxation Percentage of 15 % and the Corporation Taxation Percentage of Denmark of 22 %, as the Top-up Tax only applies to cases which falls below 15 %.

6.1.1 Top-up Taxation calculation of a foundation

An example could be if an UPE Foundation, which is not recognised as an excluded entity because it is a family foundation and can distribute to non-charitable purposes, is distributing 0 DKK to non-charitable and distributing 20 million DKK to charitable purposes. The subsidiary holding company distributes 20 million DKK to the UPE and is not taxable on the amount, as it is a distribution to a parent company. Using the formula under paragraph 3.4.1 to calculate the foundation's Effective Tax Rate in Denmark, shows that the ETR for the entity is 0 %.

$$Denmarks\ Effective\ Tax\ Rate = \frac{0}{20.000.000} = 0\ \%$$

To calculate the Top-up Tax percentage, the formula from paragraph 3.5.1 will be used, and the ETR was calculated to 0 % cf. above and the Minimum Tax Rate is 15 % cf. section 4(1)15) of the MTA. The Top-up Tax is the difference between the jurisdictional ETR and the Minimum Tax Rate. In this case 15 %.

$$Top\ up\ tax\ \% = 15\ \% - 0\ \% = 15\ \%$$

To calculate the Top-up Tax for the foundation, it is based on the Top-up Tax Percentage multiplied with the Excess Profits. The Excess Profits are the same as the GloBE Income deducted of the Substance Based Carve Out. In this case the Substance Based Carve Out is set at 1.000.000 DKK, as the foundation has a tangible asset in the form of an office and a couple of employees. This is deducted from the GloBE Income and results in 19.000.000 in Excess profits.

$$Excess\ Profits = 20.000.000 - 1.000.000 = 19.000.000$$

To calculate the Top-up Tax for the entity is to multiply the Top-up Tax percentage of 15 % with the excess profits of 19.000.000, resulting in that the Top-up tax is 2.850.000 DKK.

$$Denmarks\ Top\ up\ tax = 15\ \% * 19.000.000 = 2.850.000$$

As Denmark has implemented a Qualified Domestic Minimum Top-up Tax cf. section 47-50 of the MTA, the Top-up Tax will be collected through the QDMTT and not the Income Inclusion Rule or Undertaxed Payment Rule.

The above foundation is to pay 2.850.000 DKK in a Qualified Domestic Minimum Top-up Tax to the Danish tax authorities, albeit it distributed 20.000.000 DKK for charitable purposes.

$$Jurisdictional\ top\ up\ tax = (15\ \%\ x\ 2.850.000) - 2.850.000 = 0$$

But other jurisdictions will not be able to Top-up Tax through an IIR or UTPR.

A comparable calculation of the Top-up Tax as performed in paragraph 6.1.1 is shown below for a mixed foundation which has distributed 13.636.363 DKK to non-charitable purposes and 6.363.636 DKK to charitable purposes.

6.1.2 Top-up taxation scalable formulaic distribution

The mixed foundations can, within the rules, scale the amount of distributions, so that it reaches an effective tax rate of 15 % and not be forced to pay a Top-up Tax. The entity can thereby lower its effective tax rate from 22 % to 15 %.

The corporation tax is 22 % in Denmark which the foundation is subject to cf. FTA section 3 if it does not distribute anything for charitable purposes. If the foundation had a similar income as paragraph 6.1.1 of 20.000.000, it would mean a corporation tax of 4.400.000.

According to the MTA the jurisdiction must have an effective tax rate of 15 % which would mean a tax of 3.000.000 DKK, so a difference of 1.400.000 DKK from the 4.400.000 DKK in corporation tax. The difference in relation to paragraph 6.1.1 is 150.000 DKK in relation to the 2.850.000 DKK paid in Qualified Domestic Minimum Top-up Tax.

Under the new Minimum Taxation Act, a mixed foundation could decide to scale the distributions to respectively charitable and non-charitable purposes. A simple formulaic distribution, which does not account for special circumstances is that a mixed foundation could distribute 7/22 or 31.8182% to charitable purposes and 15/22 or 68.1818% to non-charitable purposes. Using the example of an income from a subsidiary of 20.000.000 DKK from paragraph 6.1.1, the mixed foundation would distribute and pay the following taxes.

Distribution purpose	Distribution %	Distribution	Tax %	Tax
Non-charitable	68.18 %	13.636.363	22 %	3.000.000
Charitable	31.81 %	6.363.636	0 %	0
Collectively	100.00 %	20.000.000		3.000.000

$$Denmarks\ Effective\ Tax\ Rate = \frac{3.000.000 + 0}{20.000.000} = 15\ \%$$

As elaborated under 3.4.1 the GloBE Income would be 20.000.000 DKK as income from a subsidiary. The subsidiary does not, as previously concluded, have an obligation to withhold dividend taxes on payments to a parent entity. The Adjusted Covered Taxes for the jurisdiction would be 3.000.000 total from the 3.000.000 paid on the non-charitable distribution and 0 paid on the charitable distribution. This results in an Effective Tax Rate for the mixed foundation of 15 %.

Interpreted from section 29(1), it is only necessary to continue the calculation of a top-up tax, if the Effective Tax Rate is below the Minimum Tax Rate, which it is not in this case. Therefore, there is no additional Top-up Tax to be paid.

6.1.3 Intermediary conclusions on the comparable examples

Through the implementation of the Minimum Taxation Act, the mixed foundations will have a predicament on whether it its viable to still be charitable in the same degree as before the MTA. As with the two comparable examples in paragraph 6.1.1 and 6.1.2, it is shown that a mixed foundation can distribute 20.000.000 DKK in charitable donations in 2023 and pay 0 in taxes, if it is done from 2024 the entity will be top-up taxed by 2.850.000 DKK on the same distribution. If the mixed foundation scales the distribution as seen in 6.1.2, the mixed foundation can distribute roughly 2/3 to non-charitable purposes and 1/3 to charitable purposes and pay a very similar (dependent on the substance based carve out of the foundation) tax of 3.000.000.

It will undoubtedly result in the mixed foundations to re-think their distribution policies and possibly decide to update the instrument of foundation if possible.

6.2 What does the Minimum Taxation Act mean for the future of Danish foundations

From the conclusions paragraph 5 and 6, the implementation of the Minimum Taxation Act, will have a considerable influence on the future of foundations and their distributions in Denmark.

What is most likely is, that many of the foundations which can be recognised as mixed foundations and therefore possibly subject to a Top-up Tax, will change the instrument of foundation to the extent that it can exclusively distribute for charitable or public benefit.

This might mean, that the subsidiary of the Foundations will adjust the amount of income that they distribute to the foundations. This will happen in order to be recognized as an excluded entity as a non-profit organisation cf. section 4(1)11) litra b of the MTA, a substantial amount of income must be exempt from income taxation.

7. Summary and conclusion

The theory of the thesis is *"The treatment of Danish commercial foundations in the Minimum Taxation Act"* and will examine the tax-related obstacles for foundations in relation to the Minimum Taxation Act.

The Minimum Taxation Act is a complex set of legislation, as explained in paragraph 3, and will require MNE Groups to build systems that can acquire and calculate a large set of new data points for the reporting, although the calculation is relatively simple and easy to complete, once you have the data points.

When the legislation was announced for public hearing, it brought much uncertainty to the stakeholders of commercial foundations, as it was apparent that foundations, by domestic law, can achieve an effective tax rate of 0 % by distributing for charitable and public benefit. This was evident by the amount of hearing statements given and the publishing of the two articles on the subject SR.2023.233 and SR.2023.296. The problem would especially relate to whether the foundations can be considered as an excluded entity and therefore not be subject to the Minimum Taxation Act at all.

In paragraph 4, it was examined whether the Danish Ministry of Taxation has modified the Danish implementation to suit the domestic legislative circumstances on commercial foundations. This was not the case, as the Model GloBE Rules are subject to international qualification and recognition, and therefore the implementation is as close as possible to the model rules. It its therefore derived that the Ministry of Taxation has had very little opportunity to modify the legislation, as it would compromise the Danish tax base of the legislation, if for example, the Qualified Domestic Minimum Top-up Tax or Income Inclusion Rule would not be recognized internationally.

Upon the conclusion in paragraph 4, paragraph 5 examines whether some of the larger known Danish commercial foundations would be identified as a non-profit organization, and thereby an excluded entity. With reference to MTA section 4(1)11) litra a, a lot of the Danish foundations could not be deemed as a non-profit organisation, and thereby an excluded entity, as they are not exclusively established and operated for charitable and public benefit. Many commercial foundations are "mixed foundations", where they mix

charitable purposes with distributions and priority, to descendants or businesses. This could result in foundations being top-up taxed for the difference between the effective tax rate and the minimum tax rate of 15 %, unless the foundations change the group structure or articles of the instrument of foundation. While there might be an overlap between the definition of charitable and public benefit in litra a and the Foundation Taxation Act, there is not yet any case law to establish it.

As many Danish commercial foundations could be deemed as an included entity and therefore within the scope of the legislation, the thesis tests what happens when the Minimum Taxation Act is applied to mixed foundations in paragraph 6. The conclusion is that mixed foundations will be subject to a Qualified Domestic Minimum Top-up Tax for the difference between its effective tax rate and the minimum tax rate of 15 %, notwithstanding that all distributions and donations are charitable. As the Danish corporation taxation percentage is 22 %, there is room within the legislation to scale mixed distributions on the formula of 15/22-part non-charitable distribution and 7/22-part charitable distribution and the effective tax rate will be 15 %.

Conclusions being that many Danish foundations should review the instrument of foundation, to make sure that it suits the foundations group structure and purposes. If this is not done, the foundation could be subject to a Top-up Tax through the Qualified Domestic Minimum Top-up Tax.

8. References and literature

8.1 Links

Description	Link	Visited on
Note on EU's implementation of Pillar 2 from The Danish Ministry of Taxation	https://www.ft.dk/samling/20211/almdel/SAU/bilag/162/2538787.pdf	02-12-2023
Council Directive 2021-823 Proposal on implementation of Model GloBE Rules	https://taxation-customs.ec.europa.eu/system/files/2021-12/COM_2021_823_1_EN_ACT_part1_v11.pdf	01-10-2023
STTR Explanation	https://www.oecd.org/tax/beps/pillar-two-subject-to-tax-rule-in-a-nutshell.pdf	13-10-2023
L5 Minimum Taxation Act Proposal in Parliament	https://www.ft.dk/samling/20231/lovforslag/l5/index.htm	02-12-2023
L5 Minimum Taxation Act Proposal (MTA)	https://www.ft.dk/ripdf/samling/20231/lovforslag/l5/20231_l5_som_fremsat.pdf	02-12-2023
Council Directive 2022/2523	https://eur-lex.europa.eu/eli/dir/2022/2523/oj	02-12-2023
Model GloBE Rules	https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two_782bac33-en	02-12-2023
Model GloBE Rules Commentary	https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-the-digitalisation-of-the-economy-commentary-to-the-global-anti-base-erosion-model-rules-pillar-two-first-edition_1e0e9cd8-en	02-12-2023
Example of Rockwool subsidiary revenue	https://www.nemzeticegtar.hu/rockwool-hungary-kft-c1909060041.html	02-12-2023
OECD Statistics on Corporate Income Taxation and Dividend	https://stats.oecd.org/Index.aspx?DataSetCode=CTS_CIT	02-12-2023
A.P Møller donation of the Opera to Denmark	https://www.apmollerfonde.dk/projekter/operaen/	02-12-2023
A.P Møller donation to the Danish Primary School	https://www.apmollerfonde.dk/folkeskoledonationen/	02-12-2023
Hearing Statements on the L5 MTA proposal	https://www.ft.dk/samling/20231/lovforslag/L5/bilag/1/2758598.pdf	02-12-2023
Lundbeckfonden Instrument of foundation	https://lundbeckfonden.com/files/media/document/2023%2003%2027%20Lundbeckfonden%20Fundats.pdf	04-12-2023
Rockwool Fonden Instrument of foundation	https://rockwoolfonden.s3.eu-central-1.amazonaws.com/wp-	04-12-2023

	content/uploads/2023/08/RF-fundats-2011.pdf	
Rockwool Fonden on distributions	https://rockwoolfonden.dk/saadan-stoetter-vi/	05-12-2023
Rockwool Fonden publications	https://rockwoolfonden.dk/udgivelser/	05-12-2023
SKM.2003.15 ØLR East District Court	https://info.skat.dk/data.aspx?oid=160759	05-12-2023
SKM2010.276.BR Local Court	https://info.skat.dk/data.aspx?oid=1896497	05-12-2023
Novo Nordisk Fonden on distributions	https://novonordiskfonden.dk/bevillingslister/	06-12-2023
Novo Nordisk Fonden instrument of foundation	https://novonordiskfonden.dk/hvem-er-vi/vedtaegter/	06-12-2023
Grundfos Fonden instrument of foundation	https://www.pdjf.dk/wp-content/uploads/2017/12/Fundats_Charter_PDJF_DA_EN_20150304_web.pdf	06-12-2023
Velux Fonden instrument of foundation	https://veluxfoundations.dk/sites/default/files/fundats_for_velux_fonden_0.pdf	06-12-2023
Bitten og Mads Clausen Fonden instrument of foundation	https://www.bmcfond.dk/media/1428/fundats-rev-2606.pdf	06-12-2023

8.2 Articles

SR.2023.233

SR.2023.296

9. Definitions, translations, and abbreviations

Qualified Domestic Minimum Top-up Tax	QDMTT	Kvalificeret indenlandsk ekstraskat
Income Inclusion Rule	IIR	Indkomstmedregning
Undertaxed Profit Rule	UTPR	Underbeskattet overskud
Instrument of Foundation		Fundats/vedtægter
Minimum Tax Act	MTA	Minimumsbeskatningsloven
Act on Commercial Foundations	CFA	Lov om Erhvervsdrivende fonde
Act on Taxation of Foundations and certain associations	FTA	Fondsbeskatningsloven

Act on Corporation Taxation	CTA	Selskabsskatteloven
Low Taxed Constituent Entity	LTCE	Lavtbeskattet Koncernenhed
Effective Tax Rate	ETR	Effektiv skattesats