The beneficial owner cases

Practice area under Tax

With its judgments in the so-called "Danish Beneficial Owner" (or "Danish Anti-Abuse") Cases in 2019, the Court of Justice of the European Union (CJEU) effectively put Denmark on the tax map, and in many ways gave some ground-breaking - and for many observers; surprising - guidelines as to the application and interpretation of the general EU anti-abuse principle. This has had a great impact throughout the EU - and will continue to do so in the future interpretation of the general anti-abuse rule such as it has now been enacted in the EU directives.

Plesner played a prominent role in these court proceedings, both before the CJEU and nationally. With the Danish Supreme Court's judgments from January, May and June 2023 in the main cases, they have now been concluded. A number of similar "old" cases are, however, still being processed in the appeals system.

The final outcome has encouraged the DTA to test new boundaries, and consequently new types of abuse cases are arising.

It seems a fair statement that the Danish tax authorities ("DTA") have been the undisputed winner in the proceedings concerning the Danish beneficial owner cases. Thus, only one taxpayer - represented by Plesner - has managed to convince the Danish courts that, in the light of the guidelines given by the CJEU, there was no abuse in the specific circumstances concerning dividend distributed ultimately to the top parent company in the USA.

This final overall outcome has certainly not stopped the DTA from testing new boundaries, and consequently new abuse cases concerning cross-border distributions of dividends and liquidation proceeds as well as payments of interest and royalties are arising. These new cases primarily concern the direct interpretation of the EU GAAR as transposed into domestic Danish tax law, and scholars, tax advisers etc. in the EU may therefore expect to see interesting tests of the anti-abuse principles from the DTA once again in the foreseeable future.

Plesner is currently litigating the first case concerning interpretation of the OECD GAAR - the PPT - which was implemented into Danish tax law at the same time as the implementation of the EU GAAR. Should the taxpayer lose this case, it will most certainly become an even greater eye-opener than the CJEU's judgment in the Danish beneficial owner cases. The case is currently pending before the Danish Supreme Court.

The Danish beneficial owner cases

The issues in the Danish beneficial owner cases are well-known in the tax community. The cases were initiated back in 2008, when the DTA launched a large number of tax claims against Danish companies that had either distributed dividends or paid interest to parent companies in other EU Member States or countries with which Denmark has concluded double taxation treaties.

The DTA claimed that the parent companies in question were so-called conduit companies because, according to the DTA, the amounts received were passed on to group-related entities in tax havens. The parent companies were consequently not the beneficial owners of the dividends or interest received - the Parent-Subsidiary Directive and the Interest and Royalties Directive had been abused - and the Danish subsidiaries should therefore have withheld tax at source in connection with such payments. As they failed to do so, the DTA was of the opinion that the Danish companies were liable to pay the tax.

The number of cases was substantial, and the values involved were significant.

In addition to the questions referred to the CJEU in six test cases - which specifically concerned the interpretation of the Parent-Subsidiary Directive and the Interest and Royalties Directive, their interaction with the general EU anti-abuse principle, and their transposition into Danish law as well as the freedom of establishment under the EC Treaty - the beneficial owner cases raised a wide range of additional questions such as the interpretation of the relevant double taxation treaties, the significance of the DTA's change in practice and the issue of whether the companies had acted negligently.

In addition, after the CJEU's judgments, it became a central question of constitutional law whether the Danish courts can or must apply the "general EU anti-abuse principle".

Finally, questions about how interest on late payment should accrue to a potential withholding tax claim have also been prevalent.

Plesner conducted and won the ISS cases

The two first cases decided by the Danish courts were the so-called ISS cases - one case involving dividend tax payments and the other involving interest tax payments.

Plesner conducted both cases for ISS, and the court ruled in favour of ISS in the cases as far back as in 2012, holding that there was no obligation to withhold tax at source.

Plesner litigated a number of test cases, including the only case in which the courts did not rule fully in favour of the Ministry of Taxation (the NetApp case)

In six specifically selected test cases (out of which Plesner represented three taxpayers), the Danish High Courts referred, in 2016, a series of preliminary questions to the CJEU.

In her opinion Advocate General Kokott - supported by the Commission – stated that the companies should be supported on almost every issue, but in its judgments of 26 February 2019 the CJEU did not follow the Advocate General.

Following the CJEU judgments, the test cases were resumed at the High Courts, and in May 2021 the two first cases (the NetApp and the TDC cases concerning dividend withholding tax) were decided by the Eastern High Court. TDC lost its case whereas the High Court essentially ruled in favour of Plesner's client, NetApp.

The High Court held that NetApp had documented that distribution of the main dividend was made as part of the Group's planned repatriation of dividends to the Group's parent company in the USA (which could have been done in a tax-exempt manner had the dividends been distributed directly), that the dividend was in fact distributed all the way up to the US parent company (and therefore this entity was in reality the "beneficial owner" of the dividend), and that consequently there was- as argued by NetApp - no abuse of the relevant tax treaties or of the Parent/Subsidiary Directive. Accordingly, the fact that the dividend had passed

through an intermediary holding company in a state with which Denmark had not concluded a tax treaty was not decisive. In respect of a second, and smaller, dividend, the High Court, however, found that there was abuse.

The Ministry of Taxation appealed the judgment to the Supreme Court (just as TDC appealed its judgment).

On 9 January 2023, the Supreme Court gave its judgment in the NetApp and TDC cases. The TDC judgment was upheld, whereas the Supreme Court turned the judgment of the Net App judgment upside down. The Supreme Court found that there was abuse in relation to the main dividend in the case, whereas there was no abuse in respect of the second dividend. In connection with the main dividend, the Supreme Court attached significant importance to the fact that the intermediary holding company - which was resident in a non-treaty state - was not effectively barred from disposing of the funds before they were actually passed on the ultimate shareholder in the USA five months after receipt. In relation to the second dividend, the intermediary holding company did not have any rights to dispose independently of the funds since the funds had actually been passed on to the US parent company (by way of obtaining a loan) before the company had received the funds, and as a result the Supreme Court found in favour of NetApp, represented by Plesner, and ruled that there was no obligation to withhold dividend tax.

In later judgments in 2023 and 2024, the Supreme Court has passed judgments in both interest and dividend withholding tax cases, and the Supreme Court has found fully in favour of the Ministry of Taxation.

New GAAR cases raised concerning intra-group restructurings

As mentioned at the start, the final overall outcome of the Danish beneficial owner cases has certainly not stopped the DTA from testing new boundaries, and consequently new cases are arising.

Not surprisingly, the Danish beneficial owner cases raised enormous uncertainty about potential withholding tax on dividends and interest payments, particularly in private equity fund structures. The Danish Tax Council has therefore developed a certain practice over the years in its issuance of advance tax rulings. After the implementation of the EU GAAR (ATAD) and the OECD's PPT into national law, the Tax Council has held in some cases, based on the recommendations of the DTA, that some restructurings involving distributions of dividends or that liquidation proceeds are to be deemed abusive arrangements simply based on the notion that tax advantages are obtained.

Plesner is currently litigating the first court case concerning interpretation of the OECD GAAR - the PPT. In this case, the DTA is arguing that a winding up of a tax-inefficient holding structure (the parent company is no longer treaty protected) into a leaner and more tax-efficient structure is an abusive arrangement even if the new owner is part of a completely genuine set-up. Should the taxpayer lose this case, it could potentially have far-reaching consequences - not only in Denmark. The case is pending before the Danish Supreme Court.

In addition, cases are emerging where the DTA are widening the interpretation of the beneficial ownership concept to also cover situations where there is no actual (or intended) flow-through of funds up the ownership chain.

Consequently, the EU tax community may expect the emergence of new Danish tax cases with international impact in the foreseeable future.

See also EU tax litigation.

Case News 30.09.2026

The City Court of Copenhagen rules in favour of IT consultant in tax and VAT case

Case News 11.06.2026

High Court rules in favour of pharmaceutical multinational in landmark transfer pricing case

Case News 20.04.2026

Eastern High Court rules in favour of former UN staff in landmark pension tax case

Case News 07.04.2026

The National Tax Tribunal overturns tax increases in a case concerning alleged disguised dividends and taxation of shareholder contributions

Case News 17.03.2026

Transfer pricing dispute resolved through settlement before the Western High Court

Case News 03.10.2025

Plesner advises SCHWENK Zement in first Danish CCS farm-in on Bifrost

Case News 21.05.2025

The Supreme Court rules entirely in favour of EET Group A/S in landmark transfer pricing case

Case News 08.05.2025

Board members can deduct damages

Case News 01.04.2025

RWE sells 49% of the largest offshore wind farm in Denmark - Thor Wind Farm

Case News 18.06.2024

Sampo plc announces a public exchange offer to the shareholders of Topdanmark A/S

Case News 13.10.2023

The National Tax Tribunal reverses the case law of the Danish Tax Agency on additional taxation of foundations' tied-up funds on dissolution

Case News 30.06.2023

The Supreme Court finds in favour of the Ministry of Taxation in another "beneficial owner" case

Ratings

2026 **The Legal 500**

Within Tax, Plesner is a first tier firm.

"Very professional and skilled to work with"

"Best at litigation in the market"

"The team we work with is highly specialised within their field and has an in-depth knowledge of our sector. Understanding our sector is essential in linking tax legislation/practice to our business and being able to move forward with our specific needs"

"The team is very knowledgeable within tax, and their input is generally of a very high standard"

"Plesner has shown significant capabilities to combine tax technical knowledge with legal and commercial considerations, in order to identify the sweet spot or balance for optimal decision-making. Plesner team was responsive and proactive"

2026 **Chambers Europe**

Plesner is listed in "Band 1" as regards Tax.

"Plesner is top of its field. The lawyers are extremely knowledgeable and service-oriented; they're just the best in the business"

"Its lawyers are able to communicate complex issues in a manner that is understandable and does not over-complicate the case"

"The lawyers both dive deep and maintain a pragmatic approach"

"It is a technically strong team that has a deep understanding of tax litigation and court strategy"

"What really stands out is the team's willingness and ability to understand the client's business"

2026 **World Tax**

Plesner is ranked in Tier 1 in the World Tax ranking as the only Danish firm across the four tax categories (General Corporate Tax, Transfer Pricing, Indirect Tax, and Tax Controversy).

2025 **The Legal 500**

Within Tax, Plesner is a first tier firm.

"The tax team is the top pick in Denmark. They know the area and work with all the leading companies. Hereby they gain a unique understanding of tax issues"

"Very strong team especially within the area of disputes"

"Great insight and always up to date"

"Best in class within tax litigation"

"The team successfully familiarised themselves with a completely new area and the intricacies of the same. They not only got a very good grasp of how it worked but managed to tie it all together with the functionality and administration of reinsurance. I am confident that they will be able to do the same in other areas as well"

"Dedication, craving for knowledge and understanding of the area in question. Experts within the area of transfer pricing. Excellent in court, where they managed to draw the attention to the important matters. All in all a stellar performance both in the preparation and the execution"

2025 **Chambers Europe**

Plesner is listed in "Band 1" as regards Tax.

"Plesner is well-versed and extremely experienced in highly technical areas of law. It is able to make difficult concepts and strategic decisions digestible for non-experts"

"Plesner has significant experience and is very strong on the subject matter"

"Plesner delivers a very high standard and is best-in-class in Denmark"

2025 **World Tax**

Plesner is ranked in Tier 1 in the World Tax ranking as the only Danish firm across the three tax categories (General Corporate Tax, Transfer Pricing and Tax Controversy).

2024 **The Legal 500**

Within Tax, Plesner is a first tier firm.

"Their industry and practice knowledge is very strong"

"They have a detailed knowledge of tax and, combined with an incredible business understanding, they are able to turn a complex matter into a simple line of arguments to make a convincing story"

"Very experienced and competent within tax litigation and transfer pricing. Strong mindset around people"

"Responsive, convey technical legal matters well in general business terms"

2024 **Chambers Europe**

Plesner is listed in "Band 1" as regards Tax.

"The team is very experienced, knowledgeable and proactive in its approach"

"The lawyers are able to understand a problem holistically, and are very knowledgeable regarding practical case handling. They are always responsive and good at explaining complex matters to business teams"

2024 **World Tax**

Plesner is ranked in Tier 1 in the World Tax ranking as the only Danish firm across two tax categories (General Corporate Tax and Tax Controversy).

"Plesner is widely regarded as the leading Danish law firm for all areas of tax law, including tax litigation"



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