

ANDRA STATERS HANTERING AV *TREATY OVERRIDE*

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TRE METODER FÖR LAGSTIFTNING MOT *TREATY OVERRIDE*

I de stater som studerats förhindras *treaty override*
via:

- Konstitutionella regler
- Speciell lagstiftning
- Inkorporeringslag

KONSTITUTIONELLA REGLER SOM HINDER

Gemensamt för Frankrike, Nederländerna, Belgien och Schweiz är att:

- Avtalsföreträdet kommer till uttryck i vardera stats konstitution
- Skatteavtalen betraktas enligt maximen *lex superior*

I Frankrike och Belgien kan:

- Avtalsföreträdet underkänns om skatteavtal står i konflikt med konstitution

EXEMPLIFIERANDE LAGTEXT

- Artikel 55 i den franska konstitutionen:

Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party

- Artikel 94 i den nederländska konstitutionen:

Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions

SPECIELL LAGSTIFTNING SOM HINDER

Metoden används i Australien och på Nya Zeeland

I Australien gäller:

- Avtalsföreträdet för skatteavtal som bilagts "the International Tax Agreements Act of 1953"
- Detta med undantag för generella skatteflyktsregler

På Nya Zeeland gäller:

- Avtalsföreträdet framför de inhemska skattelagar som anges i "the Income Tax Act of 2007"

EXEMPLIFIERANDE LAGTEXT

- Section 4(2) International Tax Agreements Act 1953

"The provisions of this Act have effect notwithstanding anything inconsistent with those provisions contained in the Assessment Act (other than Part IVA of that Act) or in an Act imposing Australian Tax"

- Subsection BH1(4) Income Tax Act 2007

"Despite anything in this Act, except subsection (5), or in any other Inland Revenue Act or the Official Information Act 1982 or the Privacy Act 1993, a double tax agreement has effect in relation to

- (a) income tax; or
- (b) any other tax imposed by this Act; or
- (c) the exchange of information that relates to a tax, as defined in paragraphs (a)(i) to (v) of the definition of *tax* in section 3 of the Tax Administration Act 1994"

INKORPORERINGSLAG SOM HINDER

Metoden används i Kanada

- Avtalsföreträdet kommer till uttryck i vardera skatteavtals inkorporeringslag

Tolkning:

- "the Income Tax Conventions Interpretations Act"
- Wienkonventionen
- OECD:s modellavtal

EXEMPLIFIERANDE LAGTEXT

- Section 4(1) Canada–Kuwait Tax Agreement Act 2002

“Subject to subsection (2), in the event of any inconsistency between the provisions of this Act or the Agreement and the provisions of any other law, the provisions of this Act and the Agreement prevail to the extent of the inconsistency”

- Section 4(2) Canada–Kuwait Tax Agreement Act 2002

“In the event of any inconsistency between the provisions of the Agreement and the provisions of the *Income Tax Conventions Interpretation Act*, the provisions of that Act prevail to the extent of the inconsistency”

SAMMANFATTANDE SYNPUNKTER

Konstitutionella regler som hinder

- Monism
- Grundlagsändring

Speciell lagstiftning som hinder

- Dualism

Inkorporeringslag som hinder

- Dualism