

# Hybrid Financial Instruments in International Tax Law

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JAKOB BUNDGAARD



Wolters Kluwer

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Jakob Bundgaard

**dreyers**fond



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## Preface

This study concerns hybrid financial instruments with an emphasis on international tax law issues arising in the context of issuance of and investment in such innovative financial instruments (IFIs) from a practical as well as a theoretical perspective.

The study has taken quite some time since the launch in early 2007, where I had the privilege of being a visiting scholar at Stanford Law School. Since then, I have not been able to allocate my full attention to the study due to other less academic duties, which explain the longevity of the writing process. Consequently, I have published some of the interim results along the way as articles in tax law periodicals.

Throughout the duration of the study, I have obtained generous and kind support for the project. The Deloitte Foundation and Deloitte, Copenhagen (my previous employer) have been enormously generous in their financial support to the project. This allowed me to spend some dedicated time to conduct the research, while having the privilege of working with the issues at hand in practice and also benefitting from the valuable knowledge and experience of skilled colleagues from all over the world. The study has moreover received financial support from the Nordic Tax Research Council (in 2007 and 2012), from Studiefonden of FSR (The Study Foundation of the Danish Association of State Authorized Public Accountants) and the Nasdaq OMX Foundation. I would like to express my sincere gratitude to all the sponsors for the valuable and much appreciated support.

I would also like to express my gratitude to Professor Jeff Strnad (Charles A. Beardsley Professor of Law at Stanford Law School) for sponsoring me, and consequently allowing me the opportunity to be a visiting scholar at Stanford Law School.

Gratitude is also extended to professor emeritus Aage Michelsen, University of Aarhus, for the courtesy of providing me with his valuable input regarding the early draft plan for the study.

I would like to send a word of gratitude to the invaluable colleagues at CORIT Advisory (in particular Katja Dyppel Weber, Peter Koerver Schmidt and Michael Tell), with whom I have been so fortunate to be able to discuss tax law issues for several years. Last but not least let me express my gratitude and love to my family (Cathrine,

Elias, Cecilie and Filippa), who have travelled with me on longer research stays during the study.

All errors and misunderstandings remain my sole responsibility.\*

Jakob Bundgaard  
Kongens Lyngby, May 2016

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\* This book is # 6 in the CORIT Academic Books Series

# List of Abbreviations

AAR	Authority for Advance Rulings
ABL	Aktieavancebeskatningsloven / Danish Act on Taxation of Capital Gains on Sale of Shares
ACC	Allowance for Corporate Capital
ACE	Allowance for Corporate Equity / Allowance for the Cost of Equity
AHYDO	Applicable High Yield Discount Obligation
ARCN	Adjusted Rate Convertible Note
ARPS	Adjustable Rate Preferred Stocks
ATA-Directive	Anti Tax Avoidance Directive
BCBS	Banking Committee on Banking Supervision
BEPS	Base Erosion and Profit Shifting
BFH	Bundesfinanzhof
BIT	Bulletin for International Taxation
BStBl	Bundessteuerblatt
CBIT	Comprehensive Business Income Tax
CCCTB	Common Consolidated Corporate Tax Base
CCD	Compulsory Convertible Bond
CEN	Capital Export Neutrality
CFC	Controlled Foreign Company / Controlled Financial Company
CIN	Capital Import Neutrality
COCA	Cost of Capital Allowance
CoCo	Contingent Convertible
CPEC	Convertible Preferred Equity Certificate
CRD4	Capital Requirement Directive

## List of Abbreviations

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CTA	Corporate Tax Act
D/NI	Deduction / No inclusion
DARPS	Dutch Auction Rate Preferred Stock
DD	Double Deduction
DECS	Dividend Enhanced Convertible Stock / Debt Exchangeable for Common Stock
DFI	Derivatives and Financial Instruments
DKK	Danish Kroner
EBIT	Earnings Before Interests and Tax
EBITDA	Earnings Before Interests, Taxes, Depreciations and Amortization
ECAPS	Enhanced Capital Advantaged Preferred Securities
ECJ	European Court of Justice
ECTR	EC Tax review
EEA	European Economic Area
EEC	European Economic Community
EPS	Earnings Per Share
ESTG	Einkommensteuergesetz / Income Tax Act
ET	European Taxation
GAAP	Generally Accepted Accounting Principles
GAAR	General Anti-Avoidance Rule
GewStG	Gewerbsteuergesetz / German Trade Tax Act
GmbH	Gesellschaft mit beschränkter Haftung / German Company with Limited Liability
HFI	Hybrid Financial Instrument
HMRC	Her Majesty's Revenue and Customs
HYDO	High Yields Discount Obligation
IAS	International Accounting Standards
IBFD	International Bureau of Fiscal Documentation
IFRS	International Financial Reporting Standards
INE	Interest on Net Equity
IOC	Interest over Capital
IOE	Interest on Equity Capital
IRC	Internal Revenue Code
IRD	Interest-Royalty Directive
IRR	Internal Rate of Return
IRS	Internal Revenue Service
ISTR	International Strategic Tax Review

J	Juristen
JARAF	Journal of Applied Research in Accounting and Finance
JCP	Juros sobre o Capital Próprio
JStG	Jahressteuergesetz / German Annual Tax Act
KgaA	Kommanditgesellschaft auf Aktien / German Partnership limited by shares
KGL	Kursgevinstloven / Danish Capital Gains Act
KStG	Körperschaftsteuergesetz / German Corporation Tax Act
L. Rev	Law Review
LL	Ligningsloven / Danish Tax Assessment Act
LYONs	Liquid Yield Option Notes
MIPS	Monthly Income Preferred Securities
MRPS	Mandatory Redeemable Preference Shares
NFI	New Financial Instrument
NID	Notional Interest Deduction
OID	Original Issue Discount
ORA	Obligations Reimbursable en Actions
PERCS	Preferred Equity Redemption Convertible Stock
PHONES	Participating Hybrid Option Notes
PIE	Payable in Debt
PLI	Practicing Law Institute
PPL	Profit Participating Loan
PRIDES	Preferred Redeemable Increased Dividend Equity Securities
PSD	Parent-Subsidiary Directive
R&R	Revision og Regnskab
RCN	Reverse Convertible Note
REPOS	Repurchase Agreement
RPS	Redeemable Preference Shares
RWA	Risk-Weighted Asset
SDO	Særligt Dækkede Obligationer / Covered Bonds
SEL	Selskabsskatteloven / Danish Corporation Tax Act
SL	Statsskatteloven / Danish State Tax Act
SpO	Skattepolitisk Orientering
SR-Skat:	Skatteinformation fra de statsautoriserede revisorer
SU	Skat udland
TAM	Technical Advice Memorandum
Tax Planning Int'l	Tax Planning International



List of Abbreviations

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TFEU	Treaty on the Functioning of the European Union
TfR	Tidsskrift for rettsvitenskap
TfS	Tidsskrift for skatter og afgifter
TNI	Tax Notes International
UfR	Ugeskrift for Rætsvæsnat
WTJ	World Tax Journal

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