



SCHOOL OF  
ECONOMICS AND  
MANAGEMENT

# **Danish R&D Tax Incentives under Pillar Two: A Comparability Analysis**

An analysis of whether the Danish R&D tax rules qualify as tax incentives under Side-by-Side Package.

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Master's Thesis in European and International Taxation

15 ECTS

HARN60

Spring 2026

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# Abstract

The following thesis examines whether the Danish R&D tax incentives in sections 8 B and 8 X of the Danish Tax Assessment Act qualify as Qualified Tax Incentives (QTIs) under the OECD/G20 Side-by-Side Package and how such classification affects their treatment under Pillar Two.

The analysis is based on a doctrinal legal method combined with a functional assessment of the incentives in light of the Global Anti-Base Erosion (GloBE) framework. The Danish provisions are analysed in terms of their legal design and economic effect and subsequently evaluated against the QTI definition including the requirement of general availability and value limitation.

The thesis finds that the ordinary R&D deduction under section 8 B(1) does not qualify as a QTI, as it only gives rise to timing differences. By contrast, the enhanced deduction under section 8 B(4) may qualify as an expenditure-based tax incentive, as it results in a permanent reduction in covered taxes.

Furthermore, section 8 X qualifies as Qualified Refundable Tax Credit (QRTC) under the standard GloBE rules, as it provides cash refund linked to the qualifying R&D costs. At the same time the provision may also fall within the scope of an expenditure-based QTI under the Side-by-Side Package allowing for an alternative treatment under the Substance-based Tax Incentive (SBTI) Safe Harbour.

The thesis concludes that the classification of Danish R&D tax incentive is important for determining whether their intended benefits are preserved under Pillar Two. While the QRTC treatment may reduce the effective tax rate (ETR), classification as a QTI allows the incentives to increase adjusted covered taxes and thereby mitigate or eliminate top-up tax. The practical effect depends, however, on the implementation and legal status of the Side-by-Side Package within the Danish tax law.

**Keywords:** Pillar Two, SBTI Safe Harbour, Qualified Tax Incentives, Side-by-Side Package, Qualified Refundable Tax Credit

# Abbreviations

CE	Constituent Entity
CbCR	Country-by-Country Reporting
ETR	Effective Tax Rate
EU	European Union
GloBE	Global Anti-Base Erosion
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
IIR	Income Inclusion Rule
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-operation and Development
QDMTT	Qualified Domestic Minimum Top-up Tax
QRTC	Qualified Refundable Tax Credit
QTI	Qualified Tax Incentives
R&D	Research and Development
SBTI	Substance-based Tax Incentive
UTPR	Undertaxed Profits Rule



# 1 Introduction

## 1.1 Background

Research and development (R&D) tax incentives are not a novel feature of tax law, but rather reflect a broader global trend of using the tax system to promote investment in R&D.<sup>1</sup> Many jurisdictions, including Denmark, provide deductions, enhanced deductions and tax credits to reduce the after-tax cost of R&D activities and encourage investment in innovation.

Pillar Two, by contrast, pursues a different objective. It is not designed to promote specific economic activities, but to ensure that large multinational enterprise (MNE) groups are subject to a minimum effective level of taxation of 15 percent.<sup>2</sup> The interaction between domestic R&D tax incentives and the Pillar Two framework may therefore create a potential tension. A tax incentive that reduces domestic tax liability may become less valuable if the resulting tax benefit is neutralized through a top-up tax liability.

In response, the OECD/G20 Inclusive Framework on BEPS published the Side-by-Side Package on 5 January 2026 (Side-by-Side Package).<sup>3</sup> Among other aspects, the Side-by-Side Package introduces the concept of QTI and SBTI Safe Harbour, which may allow certain tax incentives to receive more favorable treatment under Pillar Two.<sup>4</sup>

Denmark provides tax benefits for R&D costs. Companies carrying out qualifying R&D activities may deduct their qualifying R&D costs and, under certain conditions, claim an enhanced deduction exceeding the actual costs incurred. In addition, loss-making companies may be eligible for a cash tax credit corresponding to the tax value of qualifying R&D costs.<sup>5</sup>

The issue is therefore not merely that Denmark provides R&D tax incentives, but how those incentives interact with Pillar Two and whether the Side-by-Side Package may change their treatment.

## 1.2 Purpose and research questions

This thesis examines whether the Danish R&D tax incentives in section 8 B and 8 X of the Danish Tax Assessment Act may qualify as Qualified Tax Incentives under

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<sup>1</sup> See, for example, Ernst & Young (EY), 'Worldwide R&D Incentives Reference Guide 2025' (EY, October 2025) <[Tax and Law Guides | EY - Global](#)> accessed 7 May 2026.

<sup>2</sup> Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union [2022] OJ L 328/1.

<sup>3</sup> OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package (OECD 2026) Substance-based Tax Incentives.

<sup>4</sup> Ibid.

<sup>5</sup> Ligningslovens § 8 X (Denmark).

the OECD/G20 Side-by-Side Package, and how such qualification affects their treatment under Pillar Two.

The main research question is whether the Danish R&D tax incentives qualify as Qualified Tax Incentives under the Side-by-Side Package.

### **1.3 Delimitations**

The thesis focuses on the definition and treatment of QTIs within the GloBE framework with focus on expenditure-based tax incentives and QRTCs. Other aspects as Marketable Transferable Tax Credits (MTTCs) are not considered, as they are not relevant for the analysis on Danish tax law.

Furthermore, the thesis does not examine the detailed application of the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR). These rules are only referred to the extent necessary in relation to the position of the United States and the development of the Side-by-Side Package. The U.S dimension of the Side-by-Side Package, including the proposed Section 899 of the One Big Beautiful Bill Act is only included as background and not analysed in relation to the GloBE model rules.

Moreover, the thesis is limited to the SBTI Safe Harbour and does not address other elements of the Side-by-Side Package, including the Simplified ETR Safe Harbour, the extension of the Transitional CbCR Safe Harbour. The analysis is therefore limited to the classification of tax incentives and their impact on the ETR.

The thesis does not address the administrative decisions and case law concerning the scope of qualifying R&D activities under Danish tax law, as such issues relate primarily to the practical application of the rules and not their conceptual classification. This also applies to the OECD Frascati Manual. While the Danish R&D tax rules are inspired by the Manual, it primarily functions as an interpretative aid. In the absence of clear support in the preparatory works for treating, it as an independent source of legal interpretation, it is not considered further.

Finally, the thesis does not provide explanation of accounting rules under IAS/IFRS. Accounting concepts are addressed only where necessary to explain the interaction between financial accounting figures, covered taxes, GloBE income and the treatment of tax incentives under Pillar Two.

### **1.4 Method and materials**

The thesis applies a doctrinal legal method. The method is used to identify and interpret the relevant legal sources to determine the legal structure and effect of Section 8 B and X of the Danish Tax Assessment Act. It further serves to establish the conditions under which a tax incentive may qualify as qualified tax incentive under the OECD Pillar Two Side-by-Side Package.

The analysis of Danish law is based primarily on statutory provisions, supported by preparatory works, administrative guidance and relevant legal literature. These sources are used to explain the scope and design of the R&D deduction, enhanced deduction and the tax credit scheme.

The other part of the analysis is based on the OECD GloBE model rules, the OECD commentary, and the Side-by-Side package. These materials are used to explain the treatment of tax incentives under the GloBE framework, including the concepts of QTIs, QRTC and the SBTI Safe Harbour.

The analysis is system-based and take into account the structure of the ETR calculation in which the interaction between covered taxes and GloBE income is central. The assessment is supported by simplified examples to illustrate how the Danish incentives affect the ETR under different treatments.

OECD materials do not constitute binding legal sources under Danish law. However, for the purposes of this thesis, they are treated as authoritative materials, as they define the framework against which the Danish rules are assessed.

## **1.5 Outline**

Chapter 2 sets out the Danish R&D tax incentives framework focusing on Section 8 B and 8 X including their design, scope and calculation.

Chapter 3 presents the treatment of tax incentives under the GloBE framework. It explains the ETR mechanism and introduces the classification of QRTC and QTIs as well as the SBTI Safe Harbour under the Side-By-Side Package.

Chapter 4 contains the main analysis and investigates whether the Danish R&D tax incentives would qualify as QTIs under the Side-by-Side Package. The chapter evaluates section 8 B as an expenditure-based tax incentive and section 8 X as QRTC and potential QTI, including the application of the general availability and the benefit criteria (also referred to as value limitation).

Chapter 5 examines the role and legal status of the Side-by-Side Package within the EU and Danish legal framework, including its interaction with the minimum tax directive.

Chapter 6 concludes the thesis by summarising the main findings and answering the research question.

## 2 R&D tax incentives in Denmark

### 2.1 The Danish R&D tax incentives framework

More than 50 years ago, Denmark introduced its first tax rules on R&D costs to provide a statutory basis for companies to deduct such costs.<sup>6</sup> Before this, the deductibility of R&D costs was uncertain, as it depended on whether the costs were seen as maintaining existing income or creating a new income base.<sup>7</sup> This led to differences in treatment between companies, often favouring those performing R&D as part of their ongoing operations.

Section 8 B(1) of the Danish Tax Assessment Act (in Danish “Ligningsloven”, hereinafter “Ligningslovens § 8 B”) was introduced to address this issue. The provision allows companies either to fully deduct the qualifying R&D costs in the income year in which the costs are incurred or to amortize the costs on a straight-line basis over a five-year period.<sup>8</sup> The provision also allows a combination of these methods, where any portion of the costs not fully deducted is amortized over the five-year period.<sup>9</sup>

Since their introduction, the Danish R&D tax rules have been subject to several amendments. The enhanced deduction (often referred to as the “super deduction”) on R&D was introduced in 2018 and allows companies to claim a deduction exceeding the actual R&D costs incurred.<sup>10</sup> Following a period of temporary adjustments<sup>11</sup>, the enhanced deduction was made permanent with effect from 2025.<sup>12</sup>

Under the current rules, the deduction rates amount to 114 percent of qualifying costs in 2026, increasing to 116 percent in 2027 and to 120 percent in 2028 onwards for qualifying R&D costs up to a threshold of DKK 793 million (2010 price level), which corresponds to DKK 1.04 billion in 2025, and adjusted annually. R&D costs exceeding this threshold remain deductible at a rate of 110 percent.<sup>13</sup>

Following the temporary increase of the enhanced deduction, more companies began using the provision. This has led to an increasing number of administrative decisions and court cases, mainly concerning the conditions when companies carrying out

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<sup>6</sup> Lov nr 184 af 30 marts 1973 om ændring af ligningsloven, statsskatteloven, afskrivningsloven og investeringsfondsloven (Denmark).

<sup>7</sup> Statsskattelovens §§ 4-6 (Denmark); Lovforslag nr L 95 af 1972-73 (Denmark).

<sup>8</sup> Ligningslovens § 8 B(1) (Denmark).

<sup>9</sup> Skattestyrelsen, Den Juridiske Vejledning 2026-1 (The Legal Guidance), Section C.C.2.2.2.20 Udgifter til forsøg og forskning mv. <[C.C.2.2.2.20 Udgifter til forsøg og forskning mv. - info.skat.dk](https://www.skat.dk/da/vejledning/2026-1/c.c.2.2.2.20-udgifter-til-forsog-og-forskning-mv.-info.skat.dk)> accessed 24 April 2026.

<sup>10</sup> Lov nr 722 af 8 juni 2018 om ændring af afskrivningsloven og ligningsloven (Denmark).

<sup>11</sup> Lov nr 178 af 24 februar 2021 om ændring af afskrivningsloven, ligningsloven, pensionafkastbeskatningsloven og lov om afgift af svovl (Denmark).

<sup>12</sup> Lov nr 25 af 28 november 2024 om ændring af afskrivningsloven, ligningsloven og lov om indskud på etableringskonto og iværksætterkonto (Denmark).

<sup>13</sup> Ligningslovens § 8 B(4) (Denmark).

R&D activities are covered by the rules.<sup>14</sup> However, these issues are not addressed further in this thesis.<sup>15</sup>

The same applies to the OECD Frascati Manual<sup>16</sup>. Although the Danish R&D tax rules are inspired by the Frascati Manual, it primarily serves as an interpretative aid, for example in relation to the project criteria for qualifying R&D activities.<sup>17</sup> There is no clear support in the preparatory works to rely on the Frascati Manual in the legal interpretation, and it is therefore not considered further.<sup>18</sup>

The Danish R&D tax incentives are available to all companies subject to Danish taxation provided that the relevant conditions are met. The rules are therefore not limited to specific industries or types of activities but apply broadly across sectors.

## 2.2 Qualifying costs under Ligningslovens § 8 B

Ligningslovens § 8 B does not define the concept of R&D for tax purposes, nor does it list qualifying cost types in detail. The provision states that costs incurred in connection with R&D activities carried out as part of the taxpayer's business may be deducted or amortised.<sup>19</sup> The substantive scope of the provision has been shaped primarily through administrative practice and guidance.<sup>20</sup>

The Legal Guidance (Den Juridiske Vejledning) identifies three project criteria that a project must satisfy to qualify for R&D activity.<sup>21</sup> The project criteria are as follows:

- i) the activity must contain a novelty element, meaning that it seeks to produce knowledge or solutions not already in common use within the relevant industry.
- ii) It must demonstrate a creative element that goes beyond routine or standardised operations and is based on new ideas or methods.
- iii) it must also involve an element of uncertainty to either its outcome, timeframe or costs.

Within the framework of qualifying activity, deductible costs include all costs with a direct and necessary connection to the R&D work. The preparatory works identify wages, raw materials, and costs for the rental of premises, machinery, and equipment as the most common examples.<sup>22</sup>

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<sup>14</sup> See, for example, SKM2023.448.ØLR, SKM2023.382.ØLR, SKM2025.514.LSR.

<sup>15</sup> See section 1.3 'Delimitations'.

<sup>16</sup> OECD, Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development (OECD Publishing 2015).

<sup>17</sup> Skatkestyrelsen (n 9) Section C.C.2.2.2.20.

<sup>18</sup> Niels Winther-Sørensen, 'Kommentarer til udvalgte afgørelser – Forskning og udvikling' RR.SM.2021.2 (Revision & Regnskabsvæsen).

<sup>19</sup> Ligningslovens § 8 B(1) (Denmark).

<sup>20</sup> René Lønne Ventzel, 'Forskning og udvikling – skattefradraget, som man skal være varsom med at tage' RR.12.2020.58 (Revision & Regnskabsvæsen).

<sup>21</sup> Skatkestyrelsen (n 9) Section C.C.2.2.2.20.

<sup>22</sup> Ibid; Lovforslag nr L 95 af 1972-73 (Denmark).

Beyond these examples, the general principle is that any category of cost may qualify, if it is related to the R&D activity and necessary for its performance.

Costs of a more indirect nature will typically only qualify where there is a link to the R&D activity can be demonstrated. This may, for example, include mark-up from transfer pricing agreements or salary costs relating to employees who are not directly involved to a specific project but are necessary for the broader R&D activities.

Certain categories of costs fall outside the scope of the deduction. This includes costs related to the acquisition of R&D projects, market analysis, production planning, startup activities, as well as administrative and legal work related to patent applications.<sup>23</sup>

Costs related to the acquisition of machinery, fixtures or similar equipment, ships and real property fall outside the scope of Ligningslovens § 8 B and must be depreciated in accordance with the Danish Depreciation Act (Afskrivningsloven).<sup>24</sup>

Costs incurred through leasing are not similarly excluded and may therefore remain deductible under Ligningslovens § 8 B. Costs for external consultants and specialist can also be included provided their contributions are part of the R&D activity.<sup>25</sup>

### 2.3 Tax credit scheme – Ligningslovens § 8 X

The Danish R&D tax credit scheme was introduced in 2012 to provide an additional tax-based incentive for corporate investment in R&D.<sup>26</sup> The tax credit scheme is regulated in Ligningslovens § 8 X and operates as a supplement to the R&D deduction in mentioned above.

Its purpose is to improve liquidity for companies that are engaged in R&D activity, which in the early stages often incur significant costs and thereby generate losses. By allowing a cash refund, the tax credit scheme enables companies to realise the tax value of their losses immediately.<sup>27</sup>

Companies in a tax loss position are eligible to receive a cash refund equal to the tax value of qualifying R&D costs under the tax credit scheme.<sup>28</sup> The cash refund is calculated by applying the Danish corporate tax rate (currently 22 percent)<sup>29</sup> to the tax loss attributable to qualifying R&D costs:

$$\text{Tax credit} = 22 \% \times \text{eligible tax loss}$$

The tax credit scheme is subject to a monetary cap. For the income year 2026 the cash refund is limited to the tax value of losses for qualifying R&D costs of up to DKK 25 million, corresponding to maximum refund of DKK 5,5 million. From the

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<sup>23</sup> Ibid.

<sup>24</sup> Ligningslovens § 8 B(3) (Denmark).

<sup>25</sup> Skattestyrelsen (n 9) section C.C.2.2.2.20.

<sup>26</sup> Lov nr 1379 af 28 december 2011 om ændring af ligningsloven (Denmark).

<sup>27</sup> Skattestyrelsen (n 9) section C.C.2.2.2.20.

<sup>28</sup> Ligningslovens § 8 X (Denmark).

<sup>29</sup> Selskabsskatteloven § 17 (Denmark).

2027 income year onwards, this cap is increased to DKK 35 million, corresponding to a maximum refund of DKK 7,7 million:<sup>30</sup>

$$\text{Tax credit} = 22 \% \times \text{DKK } 25,000,000 = \text{DKK } 5,500,000$$

$$\text{Tax credit} = 22 \% \times \text{DKK } 35,000,000 = \text{DKK } 7,700,000$$

A key limitation of the tax credit scheme is that the cash refund replaces the right to carry forward the corresponding tax loss thereby avoiding double relief. In addition, the payment of the tax credit presumes that the company has no outstanding tax liabilities as any such liabilities may be set off against the amount payable.<sup>31</sup>

In situations where the income year covers a period shorter than 12 months the cap is reduced proportionately.<sup>32</sup>

The tax credit applies to all companies that meet the conditions for the R&D deduction. A request for the cash refund must be submitted together with the annual tax return for the relevant income year, after which the amount is refunded to the company within the same income year.<sup>33</sup>

### 3 Tax incentives under Pillar Two

The GloBE framework determines whether a constituent entity (CE) is subject to top-up tax by calculating a jurisdictional ETR. The ETR is expressed as a fraction in which adjusted covered taxes form the numerator and GloBE income forms the denominator:<sup>34</sup>

$$\text{ETR} = \frac{\text{Adjusted covered taxes}}{\text{GloBE income}}$$

Adjusted covered taxes reflects the taxes recorded in the financial accounts, subject to specific adjustments, while GloBE income is based on financial accounting net income or loss, also adjusted under the GloBE rules.<sup>35</sup> When the ETR falls below the 15 percent minimum rate, top-up tax is charged on the difference.<sup>36</sup>

GloBE income is determined by reference to financial accounting rather than domestic taxable income.<sup>37</sup> As domestic tax rules and accounting standards are not equal, a domestic incentive will typically reduce covered taxes without a

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<sup>30</sup> Skattestyrelsen (n 9) section C.C.2.2.2.20; Ligningslovens § 8 X (Denmark).

<sup>31</sup> Skattestyrelsen (n 9) section C.C.2.2.2.20.

<sup>32</sup> Skattestyrelsen (n 9) section C.C.2.2.2.20.

<sup>33</sup> Ligningslovens § 8 X(4) (Denmark).

<sup>34</sup> OECD, Tax Challenges Arising from the Digitalisation of the Economy: Global Anti-Base Erosion Model Rules (Pillar Two) (OECD 2021) art 5.1.1.

<sup>35</sup> Ibid arts 4.1.1 – 4.1.2 and 3.1.1.

<sup>36</sup> Ibid art 5.2.1.

<sup>37</sup> Ibid 3.1.1.

corresponding reduction in GloBE income. This lowers the ETR, and where it falls below 15 percent, a top-up tax charge arises that offsets part of the benefit.

The effect depends on which component of the ETR is affected. An incentive that reduces tax liability reduces the numerator and lowers the ETR. An incentive treated as income increases the denominator which also lowers the ETR.

A CE with GloBE income of 1,000 and covered taxes of 220 has an ETR of 22 percent. If a domestic R&D incentive reduces covered taxes by 100, the ETR is:

$$ETR = \frac{220 - 100}{1,000} = \frac{120}{1,000} = 12\%$$

In this situation the ETR falls below 15 percent minimum rate. A top-up tax of 30 arises, calculated as 3 percent of 1,000. The CE therefore retains 70 of the intended 100 benefit.

Domestic R&D incentives were introduced before the GloBE framework and were not designed with this interaction in mind.<sup>38</sup> Before the Side-by-Side Package, the rules did not provide a clear mechanism to address this effect. Refundable tax credits already have a defined treatment as discussed in the next section.<sup>39</sup>

### 3.1 Qualified Refundable Tax Credit

The GloBE model rules do not provide a general definition of tax credits as a standalone concept. Instead, their treatment depends on their design and how they operate. A tax credit generally reduces the tax liability directly, whereas a deduction reduces the taxable income.<sup>40</sup>

A QRTC is a tax credit that is designed to be paid to the taxpayer as a direct cash payment within four years when the qualifying costs are met and to extend the credit exceeds the tax liability for the taxpayer.<sup>41</sup> Cash payment includes cash equivalents as well as the ability to use the credit to settle liabilities other than covered taxes. A credit that can only be used to reduce covered taxes does not satisfy the refundability requirement.<sup>42</sup>

The assessment is based on the design of the provision. If the tax credit cannot exceed the liability for the taxpayer, the refund mechanism has no practical impact, and the QRTC classification does not apply.<sup>43</sup>

Under the GloBE rules, a QRTC is treated as income when the entitlement accrues. The credit is included in GloBE income and therefore affects the denominator of the

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<sup>38</sup> OECD, Side-by-Side Package (n 3), Substance-based Tax Incentives, para 12.

<sup>39</sup> OECD, GloBE Model Rules (n 34) art 3.2.4.

<sup>40</sup> OECD, Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) (OECD 2025) commentary on art 4.4.1(e), para 80.

<sup>41</sup> OECD, GloBE Model Rules (n 34) art 10.1.

<sup>42</sup> OECD (n 40) commentary on art 10.1, para 135.

<sup>43</sup> Ibid commentary on art 10.1, para 136.

ETR rather than the numerator.<sup>44</sup> If the credit has been recognized as a reduction in current tax costs, it must be added back to covered taxes.<sup>45</sup>

A CE with GloBE income of 1,000 and covered taxes of 220 that receives refundable tax credit of 100 has an ETR of:

$$ETR = \frac{220}{1,000 + 100} = 20 \%$$

The credit increases the denominator from 1,000 to 1,100, reducing the ETR from 22 percent to 20 percent.

### 3.2 The Side-by-Side Package under Pillar Two

The Side-by-Side Package cannot be understood in isolation from the political context in which it was negotiated.<sup>46</sup> The United States (US) never adopted the GloBE model rules and maintained instead that its domestic tax rules already reflected comparable minimum taxation objectives.<sup>47</sup>

Therefore, the US opposed the application of additional top-up taxation to US-parented groups under the IIR and UTPR applied by other jurisdictions.<sup>48</sup> It is safe to say that the Side-by-Side Package was developed as part of the broader political compromise on how the GloBE rules should operate alongside the US tax system.<sup>49</sup>

The OECD/G20 Inclusive Framework published the Side-by-Side Package on 5 January 2026 as part of the GloBE Implementation Framework.<sup>50</sup> The Package takes the form of administrative guidance, and it is intended to ensure a coordinated application of the GloBE rules across the in-scope jurisdictions. Its practical effect therefore depends on how the guidance will be incorporated or applied under the domestic framework.

The Side-by-Side Package operates through Article 32 of the Pillar Two Directive, under which the top-up tax attributable to a jurisdiction is deemed to be zero where the conditions of a qualified international safe harbour agreement are satisfied.<sup>51</sup> Therefore, when the safe harbour applies, an MNE group may be exempted from top-up tax in the relevant jurisdiction.

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<sup>44</sup> OECD (n 34) art 3.2.4; OECD (n 40) commentary on art 3.2.4, para 111.

<sup>45</sup> OECD, GloBE Consolidated Commentary (n 40), Commentary on art 3.2.4, para 112.

<sup>46</sup> See, for example, Dennis Weber, 'The Pillar 2 – Side-by-Side Package: A Structural Breach of EU Tax Law' (8 January 2026) <[The Pillar 2 - Side-by-Side Package: A Structural Breach of EU Tax Law | Kluwer International Tax Blog](#)> accessed 14 May 2026.

<sup>47</sup> Jannica Santos, 'G7 Backs "Side-by-Side" Agreement, Exemption for US Parented Groups; OECD Secretary-General Welcomes Breakthrough on Global Minimum Tax' (30 June 2025) <[Document - United States - G7 Backs 'Side-by-Side' Agreement, Exemption for US Parented Groups; OECD Secretary-General Welcomes Breakthrough on Global Minimum Tax - Tax Research Platform - IBFD](#)> accessed 1 May 2026.

<sup>48</sup> See, for example, Jane G Gravelle, 'Enforcement of Remedies Against Unfair Foreign Taxes' (Congressional Research Service, In Focus IF13023, 7 January 2026) <[Enforcement of Remedies Against Unfair Foreign Taxes | Congress.gov | Library of Congress](#)> accessed 16 May 2026.

<sup>49</sup> Santos, 'G7 Backs "Side-by-Side" Agreement, Exemption for US Parented Groups; OECD Secretary-General Welcomes Breakthrough on Global Minimum Tax' (n 42).

<sup>50</sup> OECD, Side-by-Side Package (n 3).

<sup>51</sup> Council Directive (EU) 2022/2523 (n 2) art 32.

Safe Harbours are not a new feature of the GloBE framework. The Minimum Tax Directive already includes a Safe Harbour in the form of the de minimis exclusion.<sup>52</sup> In addition, the GloBE Framework has developed other safe harbours, including the Transitional CbCR Safe Harbour, Qualified Domestic Minimum Top-up Tax (QDMTT) Safe Harbour and the Transitional UTPR Safe Harbour.<sup>53</sup>

The Side-by-Side Package builds on this existing Safe Harbour structure by introducing the SBTI Safe Harbour, which relates to the treatment of QTIs.

### 3.3 The Substance-based Tax Incentive Safe Harbour

The common use of tax incentives across jurisdictions as a tool to promote investments and economic development is acknowledged in the Side-by-Side Package, which introduces the SBTI Safe Harbour to allow MNE groups to retain the benefit of certain substance-based incentives.<sup>54</sup>

The SBTI Safe Harbour is an elective mechanism that allows MNE groups to treat QTIs as an addition to the adjusted covered taxes of the CEs located in the relevant jurisdiction. This increases the ETR which reduces or eliminates the potential top-up tax.<sup>55</sup>

If no election is made, the incentive is treated in accordance with the ordinary GloBE rules. Consider a CE with GloBE income of 1,000 and adjusted covered taxes of 55 following the application of a deduction. This results in an ETR of 5.5 percent and top-up tax liability of 95:

$$\frac{55}{1,000} = 5,5 \text{ percent}$$

Where the MNE group elects to apply the SBTI Safe Harbour, the value of the incentives will instead be added back to the adjusted covered taxes (limited to the amount of the QTIs used and the substance cap), increasing to 110. The ETR rises to 11 percent, and the top-up tax liability is reduced to 40:<sup>56</sup>

$$\frac{55 + 55}{1,000} = 11 \text{ percent}$$

The SBTI mechanism is substance capped, meaning that the amount of QTIs that can be considered is limited, which is calculated as the greater of 5.5 percent of qualifying payroll costs or 5.5 percent of the depreciation of qualified tangible assets in the jurisdiction for the relevant income year. It is also possible for the MNE group

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<sup>52</sup> Council Directive (EU) 2022/2523 (n 46) art 30; Franz Wallig, 'The Global Minimum Taxation Directive' in Michael Lang and others (eds), *Introduction to European Tax Law on Direct Taxation* (8th edn, Linde 2024) 241.

<sup>53</sup> OECD/G20 Inclusive Framework on BEPS, *Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)* (OECD 2022) ch 1; OECD/G20 Inclusive Framework on BEPS, *Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, July 2023 (OECD 2023) section 5.

<sup>54</sup> OECD, *Side-by-Side Package* (n 3), *Substance-Based Tax Incentives*, paras 2 and Introduction, 13.

<sup>55</sup> OECD, *Side-by-Side Package* (n 3), *Substance-Based Tax Incentives* para 1.

<sup>56</sup> *Ibid*, para 4.

to choose a five-year method under which the cap is set at 1 percent of the carrying value of the qualifying tangible assets.<sup>57</sup>

QTIs must be generally available and calculated based on qualifying costs incurred or output produced in the jurisdiction.<sup>58</sup>

### **3.4 Qualified Tax Incentives**

#### **3.4.1 Expenditure-based Tax Incentives**

An expenditure-based tax incentive is where the tax benefit is calculated by reference to specific qualifying costs. Its characteristic is the existence of a direct link between the costs incurred and the tax benefit obtained and not the legal structure of the incentive under domestic tax law.<sup>59</sup>

It is not relevant whether the classification of the incentive is structured as an enhanced deduction or as a tax credit. Both provisions may fall within the expenditure-based category provided that the benefit is directly determined by reference to the qualifying costs.<sup>60</sup>

The value of the tax benefit must not exceed the qualifying costs on which it is based. This means that the tax benefit is determined as the portion of the deduction exceeding 100 percent of the actual costs multiplied by the applicable tax rate. If the taxpayer incurs costs of 100 and is granted as deduction of 150, the additional deduction amounts to 50. If the applicable tax rate is 25 percent, the value of the incentive is therefore 12.5:<sup>61</sup>

$$50 \times 25\% = 12.5$$

If the value of the tax benefit exceeds the underlying costs, the incentive does not qualify as a QTI.

Another situation where a tax incentive does not qualify as an expenditure-based tax incentive is where the deduction is limited to 100 percent of the costs and does not provide any additional tax benefit beyond the ordinary tax treatment.

In this situation such measures reflect the standard deductibility of business expenses and therefore do not create any tax benefit to the level of the costs which means it only results in timing difference and not the overall tax liability. Therefore, this falls outside the definition of expenditure-based tax incentives.<sup>62</sup>

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<sup>57</sup> Ibid para 6.

<sup>58</sup> Ibid para 3.

<sup>59</sup> OECD, Side-by-Side Package (n 3), Qualified Tax Incentives, para 4.

<sup>60</sup> Ibid para 6.

<sup>61</sup> Ibid paras 8 and 25.

<sup>62</sup> Ibid para 7.

### 3.4.2 Production-based Tax Incentives

The QTI definition also covers production-based tax incentive which can be clarified as incentives calculated on the amount of tangible property produced in the relevant jurisdiction.<sup>63</sup>

Such incentives are, for example, where the incentives are linked to the volume of electricity generated from renewable sources or the number of units manufactured.<sup>64</sup>

Production-based tax incentives are not considered further in this thesis due to their limited relevance in Danish context, as none of the Danish R&D tax incentives are based on output or production volume.

## 4 Qualification of Danish R&D Tax Incentives under Pillar Two

### 4.1 Ligningslovens § 8 B as an Expenditure-based QTI

It has been clarified in section 2.1 that Ligningsloven § 8 B has two elements, as it grants access to the ordinary R&D tax deduction and provides for an additional deduction exceeding the underlying costs.<sup>65</sup>

Since Ligningslovens § 8 B (1) only allows a full deduction of costs without increasing the total deductible amount, it does not qualify as a QTI. The provision simply accelerates cost recovery and therefore gives rise only to a timing difference.<sup>66</sup> These differences are addressed through the deferred tax mechanism in the GloBE model rules and prevents from distorting the jurisdictional ETR.

For example, if a CE deducts R&D costs of 500 immediately for tax purposes but recognises them over five years in its financial accounts, the total deduction over time remains unchanged, as the difference is temporary. No permanent tax benefit arises, and the QTI is therefore not engaged.

The situation is different for the additional deduction under Ligningslovens § 8 B(4). As the GloBE calculation is based on the financial accounts,<sup>67</sup> and these do not recognize the enhanced deduction, the uplift gives rise to a permanent difference.<sup>68</sup> Unlike temporary differences, this gap does not reverse over time and is therefore not captured by the deferred tax mechanism. Instead, it results in a sustained

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<sup>63</sup> Ibid, paras 9 and 11.

<sup>64</sup> Ibid.

<sup>65</sup> Ligningslovens § 8 B(1) and Ligningslovens § 8 B(4) (Denmark).

<sup>66</sup> OECD, Side-by-Side Package (n 3) Qualified Tax Incentives, para 7; OECD (n 40), commentary on art 4.4, para 67.

<sup>67</sup> OECD, GloBE Model Rules (OECD 2021) art 3.1.1.

<sup>68</sup> OECD, Side-by-Side Package (n 3) Qualified Tax Incentives, para 7.

reduction in covered taxes, which may fall within the scope of an expenditure-based QTI.<sup>69</sup>

The effect on the jurisdictional ETR is illustrated in table 1 below. The example is based on a CE with GloBE income of 1,000 and qualifying R&D costs of 500, recognized in both the financial accounts and for tax purposes.

Since the GloBE income already reflects the ordinary deduction of 500, the only additional tax benefit under Ligningslovens § 8 B(4) is the 14 percent uplift, resulting in an additional deduction of 70 (500 x 14 percent), which exist only for tax purposes.

*Table 1: Example of the effect of Ligningslovens § 8(4) on the jurisdictional ETR*

Description	Calculation	Amount
GloBE Income		1,000
Qualified R&D costs		500
Additional deduction	500 x 14 %	70
Taxable income	1000 – 70	930
Current tax	930 x 22 %	204.6
Adjusted covered taxes		204.6
QTI adjustment	70 x 22 %	15.4
Adjusted covered taxes (after QTI)	204.6 + 15.4	220
ETR (without QTI)	204.6 / 1000	20.46 %
ETR (with QTI)	220 / 1000	22 %

The above example is based on the Danish corporate tax rate of 22 percent. The reduction in the ETR from 22 to 20.46 would not in itself give rise to a top-up tax liability. However, where the jurisdictional ETR is already close to the 15 percent minimum rate, a permanent reduction of this kind could be enough to trigger a top-up tax that fully or partially offsets the intended benefit of the incentive. If the deduction under Ligningslovens § 8 B(4) is added back to adjusted covered taxes in the year it is claimed, the ETR is restored to 22 percent.

#### **4.1.1 General Availability**

The definition of a QTI requires general availability, meaning that the incentive is not restricted to specific taxpayers.<sup>70</sup> Ligningslovens § 8 B can be regarded as generally available, as it applies to all companies that are subject to Danish corporate

<sup>69</sup> Ibid.

<sup>70</sup> OECD, Side-by-Side Package (n 3) Qualified Tax Incentives para 15.

income tax and incur qualifying R&D costs during their business activities regardless of limitations.<sup>71</sup>

The cap of DKK793 million (2010 price level) only affects the rate of the enhanced deduction, as the higher rate applies to the cap, while costs above that level are subject to a lower rate. This does not restrict access, since all qualifying costs remain eligible under the provision.<sup>72</sup>

The incentive does not target at in-scope MNEs. It applies to any group size and therefore also to companies below EUR750 million threshold. The general availability requirement is therefore satisfied.<sup>73</sup>

#### 4.1.2 Value Limitation

An expenditure-based incentive is excluded from QTI classification if the monetary value of the tax benefit exceeds the qualifying expenditure on which it is based.<sup>74</sup> As explained in section 3.4.1, the value of the incentive is determined as the additional deduction multiplied by the applicable statutory tax rate.<sup>75</sup>

Table 2 below applies the additional deduction under Ligningslovens § 8 B(4) across the relevant uplift rates.<sup>76</sup>

*Table 2: Tax value of the additional deduction under Ligningslovens § 8 B(4)*

<b>Year</b>	<b>Additional deduction</b>	<b>Calculation</b>	<b>Tax value</b>
2026	14	14 x 22 %	3.08
2027	16	16 x 22 %	3.52
2028	20	20 x 22 %	4.4
Above cap	10	10 x 22 %	2.2

In none of these scenarios does the tax value exceed the qualifying costs. This is not dependent on the specific assumptions used in the example but rather reflects the design of the incentive.

As the tax benefit is determined by multiplying the additional deduction with the statutory tax rate, the resulting value is notably reduced relative to the underlying costs. Even if the uplift was higher, the tax benefit would remain below the qualifying costs.

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<sup>71</sup> Ligningslovens § 8 B(1) (Denmark).

<sup>72</sup> Ligningslovens § 8 B(4) (Denmark).

<sup>73</sup> OECD, Side-by-Side Package (n 3), Qualified Tax Incentives, para 15.

<sup>74</sup> Ibid, para 8.

<sup>75</sup> Ibid, paras 8 and 25.

<sup>76</sup> Ligningslovens § 8 B(4) (Denmark).

The value limitation appears to have limited relevance in context of Ligningslovens § 8 (4), as it would require disproportionately high uplift rates to be breached.

## 4.2 Ligningslovens § 8 X as a QRTC

As described in section 2.3, Ligningslovens § 8 X provides a cash refund to companies in a tax loss position equal to the tax value of qualifying R&D costs. The refund is calculated by applying the Danish corporate tax rate of 22 percent to the portion of the tax loss attributable to such costs. The tax credit scheme is subject to a monetary cap, which for the 2026- and 2027-income years corresponds to qualifying R&D costs of up to DKK 25 million, and increased to DKK 35 million for subsequent income years.<sup>77</sup>

The amount is not applied as an offset against an existing tax liability but is paid to the taxpayer in cash, in exchange for waiving the right to carry forward the corresponding tax loss.<sup>78</sup>

The assessment of Ligningslovens § 8 X under Pillar Two has two dimensions. The first is whether it qualifies as a QRTC under the standard GloBE rules, where the credit is treated as income and included in GloBE income in the year the claim accrues.<sup>79</sup> The second is whether, under the Side-by-Side Package, it may instead be treated as an expenditure-based QTI, where the credit is added to adjusted covered taxes under the SBTI Safe Harbour rather than recognised as income.<sup>80</sup>

Ligningslovens § 8 X satisfies the condition to be classified as a QRTC. The right to the credit arises when qualifying R&D costs have been incurred and a tax loss has been established. The claim is filed as part of the annual corporate income tax return and refund is made within the same year, which falls in the four-year requirement.<sup>81</sup> The design of this provision ensures that the credit cannot operate as a reduction of an existing or future tax liability, as it is only available to loss-making companies. The refund mechanism therefore has practical significance for the taxpayers to whom it applies.<sup>82</sup>

When the credit is recognized as a reduction in current tax expense in the financial accounts, the amount must be added back to covered taxes to ensure that it is treated as income under the GloBE rules.<sup>83</sup>

This means that the credit increases the denominator of the ETR rather than reducing the numerator. As a result, the ETR falls and where the jurisdictional ETR is close to the 15 percent minimum rate, the credit may give rise to top-up tax that's offsets parts of its intended benefit.

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<sup>77</sup> Ligningslovens § 8 X (Denmark).

<sup>78</sup> Ibid; see, for example, Hans From, 'Skattekredit og fradrag for forskning og udvikling' (EY, 16 August 2023) <[Skattekredit og fradrag for forskning og udvikling | EY - Danmark](#)> accessed 20 May 2026.

<sup>79</sup> OECD (n 34) art 3.2.4; OECD (n 40) commentary on art 3.2.4, para 111.

<sup>80</sup> OECD, Side-by-Side Package (n 3) Substance-based Tax Incentive Safe Harbour, paras 3 and 21.

<sup>81</sup> OECD (n 34) art 10.1.

<sup>82</sup> OECD (n 40) commentary on art 10.1, paras 135 and 136.

<sup>83</sup> OECD (n 34) art 3.2.4.

Ligningslovens § 8 X also falls within the scope of an expenditure-based tax incentive for the purposes of the Side-by-Side Package. The amount of the credit is calculated directly by reference to qualifying R&D costs and is determined by applying the statutory corporate tax rate to those costs. The connection between the expenditure and the benefit is therefore direct. On that basis, the regime meets the defining characteristic of expenditure-based incentives, irrespective of being structured as tax credit.<sup>84</sup>

Where an election is made, the treatment of the credit changes. Instead of being recognized as income, it is added to adjusted covered taxes under the SBTI Safe Harbour.<sup>85</sup> This increases the numerator of the ETR and limits the fall pressure that arises under the standard QRTC treatment. The ability to elect QTI treatment therefore determines the extent to which the benefit of the credit is preserved under Pillar Two.

#### **4.2.1 General Availability**

The QTI definition requires that the incentive be generally available to taxpayers within the jurisdiction and not confined to a specific ownership structure, sector or category of taxpayer.<sup>86</sup> Ligningslovens § 8 X applies to all companies subject to Danish corporate tax that incur qualifying R&D costs and report a tax loss in the relevant income year. There are no restrictions, minimum size threshold or ownership-based conditions.<sup>87</sup>

The loss-position requirement should not be viewed as limiting access to companies without a tax liability. It may be argued that this targets a specific category of taxpayers and undermines general availability. However, this reflects the design of the scheme, which provides liquidity where the tax value of R&D deductions cannot be utilized. The provision does not restrict access by reference to sector, geography or ownership. In that sense, the requirement functions as a complement to the deduction system rather than as a restriction on access. The general availability condition can therefore be considered satisfied.

#### **4.2.2 Value Limitation**

An expenditure-based incentive does not qualify as a QTI where the monetary value of the tax benefit exceeds the qualifying expenditure. For tax credit, the relevant value is the amount of the credit itself.<sup>88</sup> The tax credit amounts to 22 percent of qualifying R&D cost and therefore remains below the 100 percent threshold.<sup>89</sup> The value limitation is satisfied where Ligningslovens § 8 X is considered in isolation.

Another question arises where Ligningslovens § 8 B (4) and Ligningslovens § 8 X apply to the same costs. This may happen where a loss-making company and

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<sup>84</sup> OECD, Side-by-Side Package (n 3) Qualified Tax Incentives, paras 3 and 4.

<sup>85</sup> OECD, Side-by-Side Package (n 3) Substance-based Tax Incentive Safe Harbour, paras 4 and 21.

<sup>86</sup> OECD, Side-by-Side Package (n 3), Qualified Tax Incentives, para 15.

<sup>87</sup> Ligningslovens § 8 X (Denmark).

<sup>88</sup> OECD, Side-by-Side Package (n 3), Qualified Tax Incentives para 8.

<sup>89</sup> Ligningslovens § 8 X (Denmark).

subsequently claims the Ligningslovens § 8 X credit. Where multiple incentive relates to the same costs, they must be assessed together under the Side-by-Side Package.<sup>90</sup>

*Table 3: Combined tax value of Ligningslovens § 8 B(4) and Ligningslovens § 8 X per 100 of qualifying costs*

<b>Tax incentive</b>	<b>Calculation</b>	<b>Tax value</b>
Ligningslovens § 8 B (4) – 2028	20 x 22%	4.40
Ligningslovens § 8 X	100 x 22 %	22
Combined	4.40 +22	26.40

The combined tax benefit of 26.40 per 100 of qualifying costs remains below the 100 percent threshold. The overcompensation exclusion does not apply, and the value limitation is satisfied on a combined basis.

The structure of the regime supports this result. Ligningslovens § 8 X credit is calculated to the base costs and does not extend to the additional deduction under Ligningslovens § 8(4). The two provisions therefore do not compound in a way that would distort the combined value, and the calculated amount represents an upper bound rather than a typical outcome.

#### **4.2.3 Treatment under the SBTI Safe Harbour**

As established in section 4.2.1 and 4.2.2, Ligningslovens § 8 X satisfies both the general availability and value limitation requirements to classify as an expenditure-based QTI. When these conditions are met, the filing CE can make an annual election to treat the credit as QTI rather than as a QRTC for the purposes of the SBTI Safe Harbour.<sup>91</sup>

The practical consequence of the election is that the credit is excluded from GloBE income and it instead added to the adjusted covered taxes for the income year in which the entitlement accrues, subject to the substance cap.<sup>92</sup> This contrasts with the standard QRTC treatment under which the credit is recognized as income and included in GloBE income, thereby increasing the denominator of the ETR.<sup>93</sup>

The difference is illustrated in Table 4 below. This example is illustrated with a CE that have qualifying R&D costs of 100 that are fully attributable to a tax loss. The company reports a GloBE loss of 100 and receives a cash refund of 22 under ligningslovens § 8 X.

<sup>90</sup> OECD, Side-by-Side Package (n 3), Qualified Tax Incentives, para 8.

<sup>91</sup> OECD, Side-by-Side Package (n 3), Substance-based Tax Incentive Safe Harbour, paras 3 and 21.

<sup>92</sup> Ibid paras 4 and 21.

<sup>93</sup> OECD (n 34) art 3.2.4.

The credit is assumed to be recorded as income the financial accounts, which reflects the position of a loss-making company no current tax liability to offset.

Table 4: QRTC vs QTI treatment of Ligningslovens § 8 X

Description	QRTC	QTI
GloBE loss (before credit)	(100)	(100)
Credit recognized as income	22	-
GloBE income after credit	(77)	(100)
Adjusted covered taxes - before QTI	0	0
QTI adjustment	0	22
Adjusted covered taxes - after QTI	0	22

Under the QRTC treatment, the credit of 22 is included in the GloBE income, reducing the GloBE loss from 100 to 78. Adjusted covered taxes remain zero as the company has no current tax liability. Under the QTI treatment, the credit is excluded from the GloBE income, and the GloBE loss is preserved at 100. The adjusted covered taxes are increased by 22 through the QTI adjustment.<sup>94</sup>

Since both scenarios produce a GloBE loss, no top-up tax arises in either case, and the ETR calculation does not apply.<sup>95</sup> The difference between the two treatments therefore lies not in the top-up tax outcome for the current year but in the size of the GloBE loss preserved. QTI treats the full loss of 100 whereas the QRTC treatment reduces it to 78.

The QTI adjustment is however not unconditional. It is subject to the substance cap, which limits the amount of QTIs that can be added to adjusted covered taxes by reference to the MNE groups economic substance in the jurisdiction. The substance cap is calculated as 5.5 percent of the greater eligible costs or the depreciation of eligible tangible assets in the jurisdiction for relevant income year.<sup>96</sup> The adjustment added to adjusted covered taxes is the lower of the QTIs used in the income year and the substance cap. If the QTI exceeds the substance cap, only the amount of the cap is recognized and the remainder is lost, as it cannot be carried forward to a subsequent income year.<sup>97</sup>

The practical effect of the substance cap is illustrated in Table 5 below, using the same credit of 22 from Table 4 and applying two different scenarios based on different levels of payroll costs.

<sup>94</sup> OECD, Side-by-Side Package (n 3), Substance-based Tax Incentive Safe Harbour, paras 21 and 4.

<sup>95</sup> OECD (n 34) art 5.1.1.

<sup>96</sup> OECD, Side-by-Side Package (n 3), Substance-based Tax Incentive Safe Harbour para 6.

<sup>97</sup> Ibid.

Table 5: Effect of the Substance Cap on the QTI adjustment

Description	Calculation	Scenario A	Scenario B
Ligningslovens § 8 X Credit (QTI)		22	22
Eligible payroll costs		500	200
Substance Cap	5,5 x 500 5,5 x 200	27,5	11
QTI adjustment	Lower of QTI and cap	22	11
Adjusted covered taxes before QTI		0	0
Adjusted covered taxes after QTI	0 + QTI adjustment	22	11
Credit not recognized under SBTI		0	11

In this situation, scenario A, the substance cap of 27.5 exceeds the credit of 22. The lower of the two is therefore 22, and the full credit is added to adjusted covered taxes. In scenario B, the substance cap of 11 is lower than the credit of 22. The lower of the two is therefore 11, and only 11 is added to adjusted covered taxes. The remaining 11 cannot be recognized and is lost.

The limitation is particularly relevant where a Danish CE generates substantial credit under Ligningslovens § 8 X relative to the aggregate payroll costs and tangible assets of the MNE group in Denmark. Since the substance cap is calculated at the jurisdictional level, it reflects the total eligible payroll costs and depreciation of all CEs located in Denmark and not merely those of the entity claiming the credit.<sup>98</sup> For an MNE group within the scope of the GloBE rules, the aggregate substance will often be considerable in absolute terms. However, where the Danish operations of the MNE group are concentrated in R&D activities with relatively limited payroll and tangible assets compared to the credits generated, the substance cap may nonetheless prove binding and the QTI adjustment will subsequently only partially preserve the intended benefit of the credit.

The election is an annual election and may be applied to all or part of the credit, allowing the MNE group to adjust the election to the extend of the available

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<sup>98</sup> Ibid.

substance cap.<sup>99</sup> Where the substance cap is exhausted by other QTIs in the same jurisdiction. No further QTI adjustment is available for Ligningslovens § 8 X in that income year.<sup>100</sup>

## 5 Implementation of the Side-by-Side Package

Even though the analysis above concludes that the Danish R&D rules may qualify as QTIs under the Side-by-Side Package, this conclusion must be understood in its correct legal context. The Side-by-Side Package was agreed at the OECD Inclusive Framework level and applies to financial years starting on or after 1 January 2026.<sup>101</sup>

The Side-by-Side Package is not itself an EU legislative act. It takes the form of administrative guidance to the GloBE model rules.<sup>102</sup> It therefore does not, by itself, create binding obligations for taxpayers under Danish law. Pillar Two obtains its binding effect in the EU from Council Directive (EU) 2022/2523. Under Article 288 TFEU, directives are binding as to the result to be achieved but leave to the national authorities the choice of form and methods.<sup>103</sup>

Denmark has implemented the Directive through the Minimum Taxation Act (Minimumsbeskatningsloven).<sup>104</sup> The Side-by-Side Package may therefore inform interpretation, but it does not in itself create rights or obligations for in-scope groups.

The entry point for the Side-by-Side Package is Article 32 of the Minimum Tax Directive.<sup>105</sup> This article allows the top-up tax due in a jurisdiction to be deemed to zero where the conditions for qualifying international agreement on safe harbours are met.

Following the introduction of the Side-by-Side Package, the European Commission acknowledged the OECD Inclusive Framework Agreement on Safe Harbours and confirmed its application in the context of the directive.<sup>106</sup> This suggests that the safe harbours introduced in the Side-by-Side Package may operate within the structure of the directive without formal approval. However, this approach has attracted criticism

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<sup>99</sup> Ibid para 22.

<sup>100</sup> Ibid para 20.

<sup>101</sup> OECD, Side-by-Side Package (n 3).

<sup>102</sup> Ibid.

<sup>103</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47, art 288.

<sup>104</sup> Lovbekendtgørelse nr 1089 af 2. september 2025 om ekstraskat for visse koncernenheder (minimumsbeskatningsloven) (Denmark).

<sup>105</sup> Commission Notice, 'The OECD Inclusive Framework Agreement on Safe Harbours and the Pillar Two Directive' [2026] OJ C 253/1.

<sup>106</sup> Ibid.

from experts, who argue that the use of Article 32 in the directive is beyond its original function as a safe harbour.<sup>107</sup>

Unlike the Transitional CbCR Safe Harbour and the simplified ETR Safe Harbour, which function are to reduce compliance burdens<sup>108</sup>, the SBTI Safe Harbour does not appear to provide any meaningful simplification. As demonstrated in section 4, its application does not eliminate or reduce the need for detailed GloBE calculations.

A key implication of this finding is whether qualifying incentives under the SBTI Safe Harbour would have any practical relevance from a Danish perspective. Currently, in-scope groups are allowed to use the Transitional CbCR Safe Harbour, which functions as a simplification mechanism by allowing the use of CbCR and financial accounting data as a proxy instead of performing full GloBE calculations.<sup>109</sup> As these rules apply until the end of 2027, and the Side-by-Side Package takes effect from 1 January 2026, the practical relevance of the SBTI Safe Harbour remains limited as long as full GloBE calculations are not required.

Also, the Danish corporate tax rate is 22 percent, which also implies that, from a simplified perspective, it is unlikely that Danish CE will have an ETR below the 15 percent minimum rate on a jurisdictional basis. This assumption is also supported by the calculations presented above, which indicate only a limited impact on the ETR, given that the domestic tax rate already exceeds the minimum tax threshold.

## 6 Conclusion

The thesis examined whether the Danish R&D tax incentives may qualify as QTIs under the Side-by-Side Package, and how such qualification affects their treatment under Pillar Two.

The analysis has shown that the Danish R&D tax rules cannot be assessed as one single provision even though the provisions complement each other. This is because the provisions operates through different mechanisms and therefore have different effect under the GloBE rules. The ordinary deduction, enhanced deduction and tax credit have therefore been assessed differently.

Ligningslovens § 8 B does not qualify as a QTI. The provision allows companies to deduct eligible R&D costs immediately or to amortize them over a five-year period. It does not provide any tax benefit exceeding the actual cost incurred. Its function is therefore limited to the timing of cost recovery. The timing difference between the tax treatment and financial accounts are not permanent and thereby not in scope to be considered a QTI.

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<sup>107</sup> See e.g. Weber (n 41).

<sup>108</sup> OECD (n 40) commentary on Transitional CbCR Safe Harbour, para 1.

<sup>109</sup> Ibid.

Ligningsloven § 8 B(4) allows companies to deduct an amount over the actual R&D costs incurred. The additional deduction relates only to tax purposes and is not reflected the same way in the financial accounts. As a result, it creates a permanent difference between the tax base and GloBE income. This reduces covered taxes without reducing the denominator in the ETR calculation. The analysis has shown that this type of incentive may be affected by Pillar Two, because the value of the tax benefit may be reduced or neutralized by top-up tax if the jurisdictional ETR falls below 15 percent.

The thesis concludes that Ligningslovens § 8 B(4) qualifies as an expenditure-based QTI under the Side-by-Side package. The provision is generally available since it applies to all companies that have incurred qualifying R&D costs without limitation to selected taxpayers. The value limitation is also satisfied, as the value of the additional deduction is limited to a fraction of the qualifying costs and therefore does not exceed the costs to which it relates. Where an in-scope MNE group elects to apply the SBTI Safe Harbour, the enhanced deduction should therefore be capable of being added back to adjusted covered taxes within the limits of the applicable substance cap.

Ligningslovens § 8 X allows loss-making companies to receive a cash refund corresponding to the tax value of the R&D costs. The analysis has shown that this provision may qualify as a QRTC under the ordinary R&D rules. Under this treatment, the refund is included in GloBE income rather than treated as a reduction of covered taxes. The Side-by-Side Package also introduces an alternative treatment where Ligningslovens § 8 X can be treated as an expenditure-based QTI. The effect of this election is that the credit is added to adjusted covered taxes through the SBTI Safe Harbour instead of being included in GloBE income as QRTC. This may preserve the intended benefit of the incentive more directly, although the adjustment remains subject to the applicable substance cap.

The Side-by-Side Package does not itself constitute binding Danish law. It operates as an OECD/G20 Inclusive Framework agreement and obtains relevance in the EU through the Minimum Tax Directive and, in Denmark, through the Danish Minimum Taxation Act (Minimumsbeskatningsloven).

The European Commission has indicated that the safe harbours introduced by the Side-by-Side Package may operate within the framework of Article 32 of the Directive. However, until the application of the Package is reflected in administrative practice or further legislative guidance, some uncertainty remains as to how the Danish tax authorities will apply the QTI framework in practice.

In conclusion, the ordinary deduction under section 8 B(1) falls outside the QTI framework. The enhanced deduction under section 8 B(4) qualifies as an expenditure-based QTI. Section 8 X qualifies as a QRTC under the ordinary GloBE rules and may potentially be treated as a QTI under the Side-by-Side Package, subject to the substance cap.

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