

Transfer Pricing – Transfer Pricing-dokumentation – TNM-metoden

Dato for udgivelse 05 Oct 2020 16:12

Dato for afsagt dom/kendelse/ afgørelse/ styresignal 02 Jul 2020 10:54

SKM-nummer SKM2020.397.VLR

Myndighed Vestre Landsret

Ansvarlig styrelse Skattestyrelsen

Sagsnummer BS-714/2016



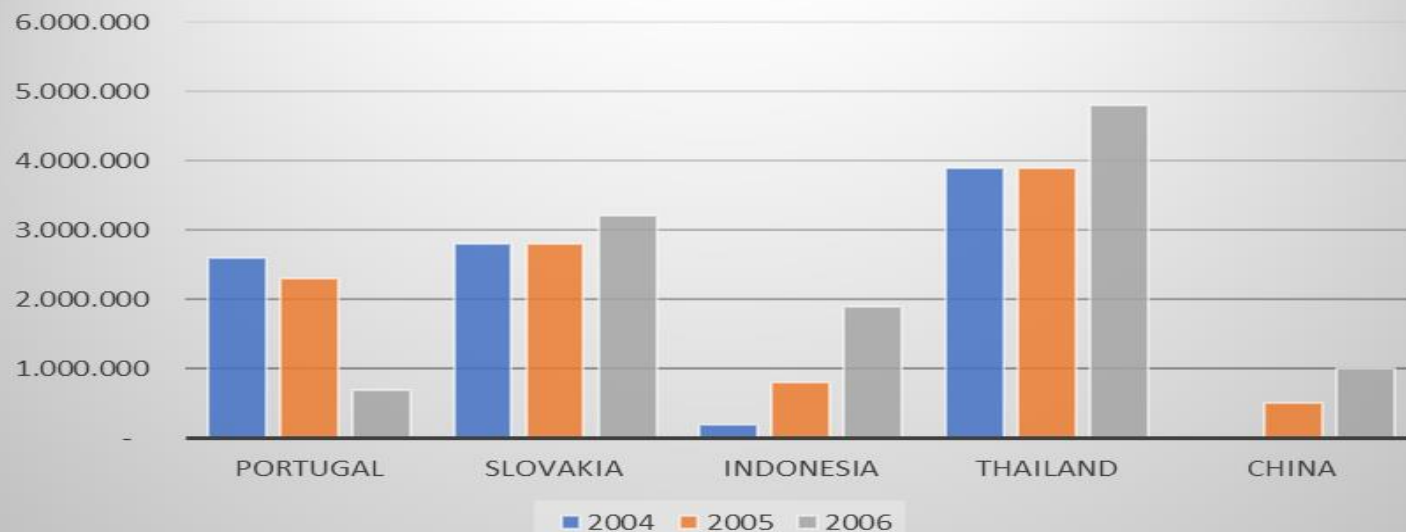
Ecco 2020 – Background info from annual accounts



Since it was founded in 1963 in the town of Bredebro in southwestern Denmark, ECCO has been owned and managed by the Toosbuy family. Today, Hanni Toosbuy Kasprzak – the daughter of Birte and Karl Toosbuy – is the sole owner of the Company and Chairperson of the Supervisory Board. Her husband, Dieter Kasprzak, is Chief Executive Officer (CEO), and Mikael Thinghuus is Chief Operating Officer (COO).

ECCO's Annual Report 2005

Shoe production



Group structure as of 1 January 2006



Ecco 2020 – Danish tax authorities' case summary

Resumé

Et dansk moderselskab indkøbte varer fra såvel interne som eksterne producenter, og sagen angik, om samhandlen med de udenlandske datterselskaber skete på armslængdevilkår.

Moderselskabet havde udarbejdet to sæt to transfer pricing-dokumentationer, der begge forelå, da skattemyndighederne traf afgørelse. Transfer pricing-dokumentationen indeholdt en gennemgang af moderselskabets fastsættelse af priser og vilkår i forhold til både interne og eksterne produktionsselskaber, og herudover indeholdt transfer pricing-dokumentationen sammenlignelighedsanalyser. Landsretten fandt efter en samlet vurdering, at moderselskabets transfer pricing-dokumentation gav skattemyndighederne et tilstrækkeligt grundlag for at vurdere, om armslængdeprincippet var overholdt, og at dokumentationen ikke var mangelfuld i et sådant omfang, at den kunne sidestilles med manglende dokumentation.

Spørgsmålet var herefter, om Skatteministeriet havde godtgjort, at honoreringen af moderselskabets transaktioner med de udenlandske datterselskaber ikke skete på armslængdevilkår. Dette fandt landsretten ikke godtgjort.

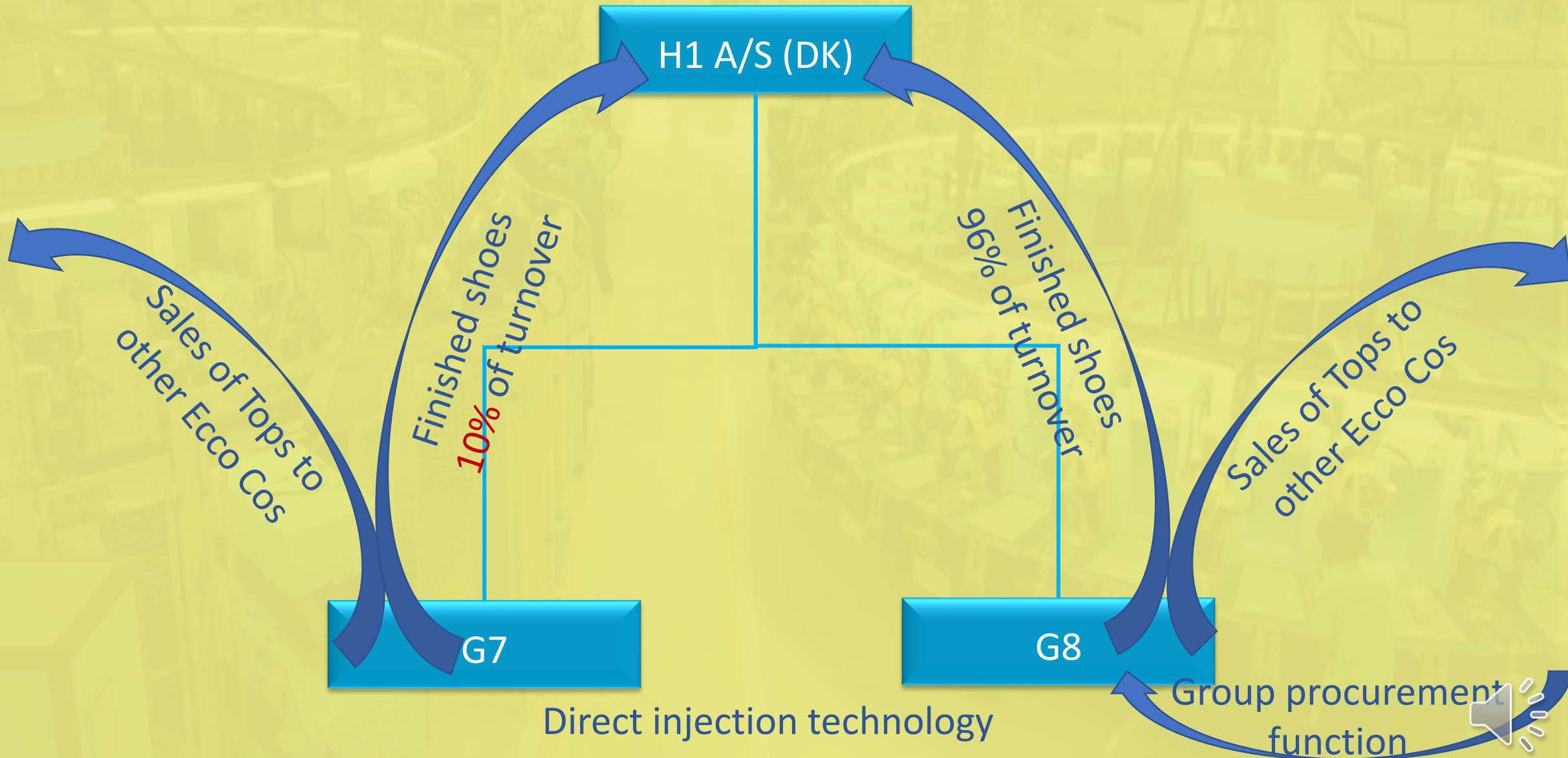
A Danish parent company purchased goods from both internal and external producers, and the case concerned trade with the foreign subsidiaries happened on arm's length terms.

The parent company had prepared two sets of two transfer pricing documentation, both of which were available when SKAT made a decision. The transfer pricing documentation included a review of the parent company determination of prices and terms in relation to both internal and external production companies, and in addition included the transfer pricing documentation comparability analyzes. The High Court found after a collective assessment that the parent company's transfer pricing documentation provided the tax authorities with an adequate basis for assessing whether the arm's length principle was complied with and that the documentation was not deficient to such an extent that it could be equated with a lack of documentation.

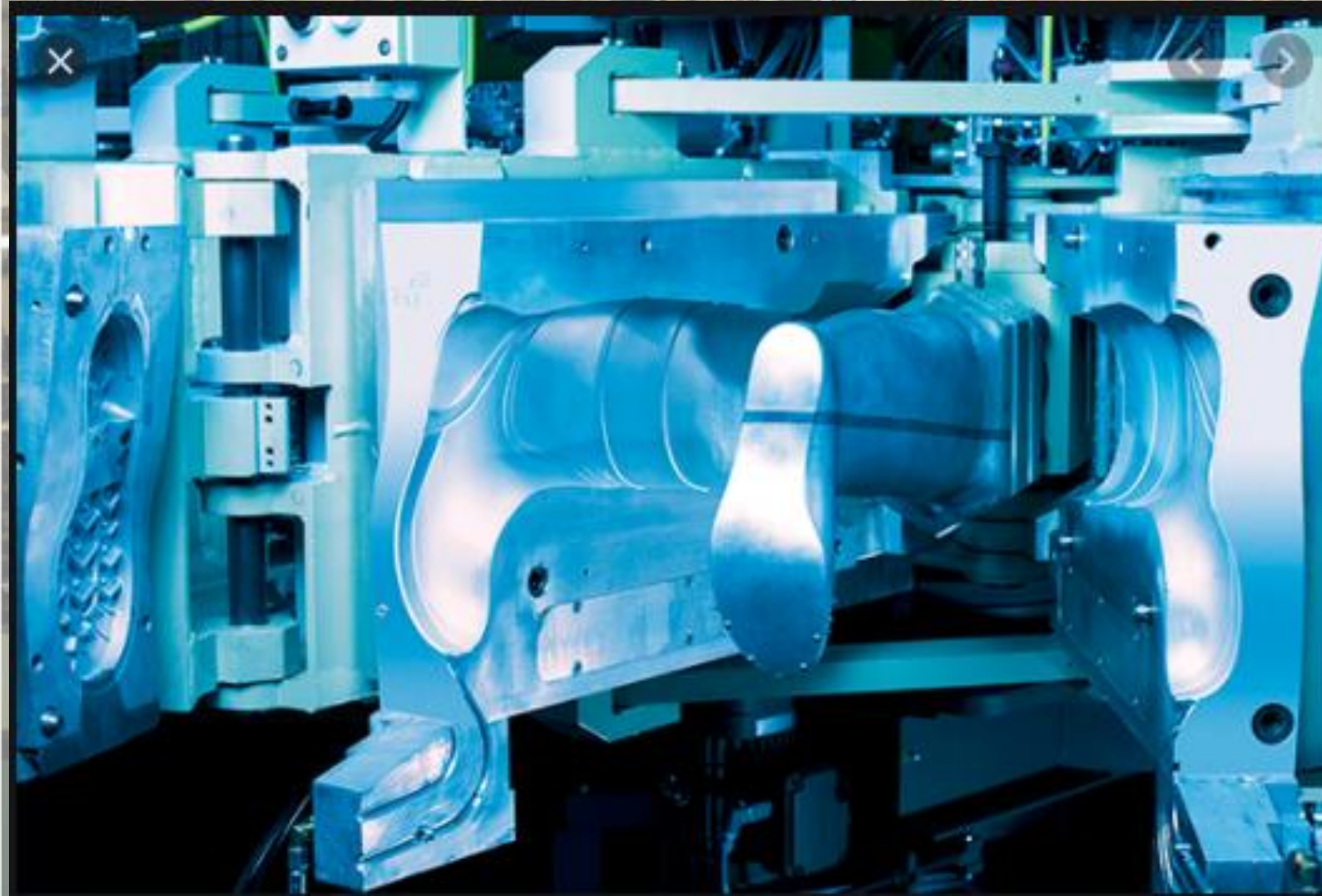
The question then was whether the Ministry of Taxation had proved that the remuneration of the parent company's transactions with the foreign subsidiaries did not happen on arm's length terms. This the High Court found not substantiated.



Ecco 2020 – Relevant structure and transactions



Ecco 2020 – “Direct injection technology”



Short video

<https://www.youtube.com/watch?v=hXd3Aoo2zfc>

Longer

<https://www.youtube.com/watch?v=e5QXv0Vx-U>



Ecco 2020 – How centralised was management and intangibles

2004 Accounts

In 2004, ECCO made a number of radical changes to its organisational structure to increase the ability to take action and become more effective and profitable by placing responsibilities and decision-making powers as close as possible to the day-to-day operations of our units.

Headquarters

As a result of the organisational change, ECCO's headquarters will be responsible for brand, product and concept development and for central Group functions such as logistics, IT, treasury, taxation and legal services. In addition, the headquarters will act as a support and control unit vis-à-vis the individual business units.

Business units

As a result of the organisational change, each of ECCO's 11 business units now has its own management, supervisory board and budget and financial statements. The business units have thus been given a clear and more direct responsibility for their day-to-day operations and related processes as well as significantly more freedom to act.

2005 Accounts

In order to retain and develop an already unique technology and in full accordance with ECCO's focus on the entire value chain, ECCO began setting up its own mould workshops with specially trained specialists in Thailand and Denmark in 2005. The independent location of the mould workshops ensures a constant focus on reducing delivery times and development costs.

The factory in Portugal

To retain the Group's competitiveness, some of the most simple production tasks were moved to other units, but ECCO chose to keep important high-tech and development-orientated tasks at the factory in Portugal. In recent years, the factory in Portugal and especially its Portuguese employees have gained a great deal of know-how in high-tech production processes.

An example of this is the highly complicated process of laser roughening of leather used in attaching particularly sophisticated and technically demanding types of soles developed in Portugal. In future, the unit in Portugal will act as ECCO's R&D centre for the development of new, sophisticated production processes.

2006 Accounts

ECCO's organisation reflects the basic concept that decisions should be made as close to the market as possible and by those who are best qualified to make them. Our 11 business units, supported by a strong head office, therefore have broad freedom of action to make the necessary decisions where things happen, and when market developments demand.

Business units

ECCO's business units, with their strong leadership as well as their own budgets and annual accounts, have the opportunity to make rapid and focused decisions. The business units thus have direct responsibility for their own daily business and all related processes.

ECCO Portugal – global R&D centre

After a restructuring process, ECCO Portugal is now a fully integrated part of ECCO's research and development activities, which otherwise primarily take place in Denmark.

ECCO Portugal now functions as a service unit for research and development for the other ECCO factories. Here, new production processes for advanced products are developed, before the products are transferred to other units for mass-production. Other ECCO units visit Portugal for training

Ecco 2020 – General comments about case

- Interesting case, but difficult to follow
 - Some form of comparability analysis
- Head of tax subsequent comments are insightful

mnetax.com/denmark-courts-reject-tax-authoritys-formalistic-transfer-pricing-approach-41130

MNE Tax

Multinational Group Tax & Transfer Pricing News

Denmark courts reject tax authority's formalistic transfer pricing approach

🕒 October 28, 2020 📍 Denmark, Europe, Featured News, Transfer Pricing

By Susi Baerentzen, Ph.D., Copenhagen

- One factor which likely turned the tables was that ECCO was able to argue their case before the High Court for five days. In comparison, the taxpayer had only 45 minutes to argue their case before the Tribunal.
- In addition, ECCO switched tactics. Before the Tribunal, the focus was on invalidating the claims made by the tax administration; before the High Court, though, they focused on substantiating their business strategy.



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- Head of tax subsequent comments are insightful
- Too many fact deletions

H1 A/S' transaktioner med G8 Ltd. og G7

Spørgsmålet er herefter, om Skatteministeriet har godtgjort, at H1 A/S' transaktioner med G8 Ltd. og G7 ikke skete på armslængdevilkår.

Det fremgår af transfer pricing-dokumentationen, at den gennemsnitlige dækningsgrad - beregnet som et simpelt gennemsnit - for H1 A/S var højere for sko produceret af eksterne produktionsselskaber (FORTROLIGT) end for sko produceret af G8 Ltd. (FORTROLIGT) og G7 (FORTROLIGT). Det anføres i transfer pricing-dokumentationen, at denne forskel bl.a. skyldes, at G8 Ltd. og G7 producerede sko efter injected-metoden, som krævede større investeringer end produktion efter cemented-metoden, som blev anvendt hos de eksterne produktionsselskaber.

Landsretten lægger efter bevisførelsen til grund, at forskellene i den gennemsnitlige dækningsgrad også må vurderes i lyset af, at der var betydelige variationer i dækningsbidraget for de enkelte skomodeller, og at det samlede dækningsbidrag hos H1 A/S ved salg af en given skomodel ikke alene afhang af dækningsbidraget for den pågældende skomodel, men i høj grad også af antallet af solgte sko.

Det fremgår således af sagens oplysninger, at (a. FORTROLIGT) af skoene produceret af henholdsvis G8 Ltd. og af FORTROLIGT i 2005 var damesko. Selv om dækningsbidraget for skoene produceret af G8 Ltd. var lavere end for skoene produceret af FORTROLIGT (FORTROLIGT), blev der solgt mere end dobbelt så mange sko produceret af G8 Ltd., således at det samlede dækningsbidrag for H1 A/S var væsentligt større for damesko produceret af G8 Ltd. end for sko produceret af FORTROLIGT og FORTROLIGT.

Hertil kommer, at den gennemsnitlige dækningsgrad for sko produceret af H1 A/S' eksterne produktionsselskaber i 2005 efter det oplyste varierede fra FORTROLIGT. Det fremgår også af sagens oplysninger, at der i perioden 2005-2013 var betydelige variationer i de realiserede EBIT-marginer for både H1 A/S' interne produktionsselskaber, herunder G8 Ltd. og G7, og for FORTROLIGT, herunder datterselskabet FORTROLIGT, som stod for skoproduktionen.

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- Head of tax subsequent comments are insightful
- Too many fact deletions
- Case build up in itself (not a summary judgement)

Case build up

Previous decision = facts

Witness testimony summaries

Parties point of view

- Head of Tax comment very clear
- Too much technicalities
- Feels very adversarial: being right, not finding right

Court argumentation

Court decision



Ecco 2020 – Court decision

- No rejected documentation, substituted amounts or reversal burden of proof
- No mention royalties transaction or intangibles
- Shoe prices G7 & G8 at arm's length
 - Lumping G7 & G8 together
 - Using H1 A/S as comparable
 - Fair lower contribution margin, because Direct Injection equipment much more expensive
 - H1 A/S request G7 & G8 further reduce cost & budget approval subject to further savings
 - No overbudgeting
 - Never really a clear characterisation of any parties and very little about risk
 - Making point about volume dependence for contribution margin (between Gross & Operating profit), or did they mean EBIT(DA).
- Conclusion
 - No documentation rejection, hope SKAT would stop doing this
 - No recharacterisation
 - No appeal, but some legislative changes coming up

