

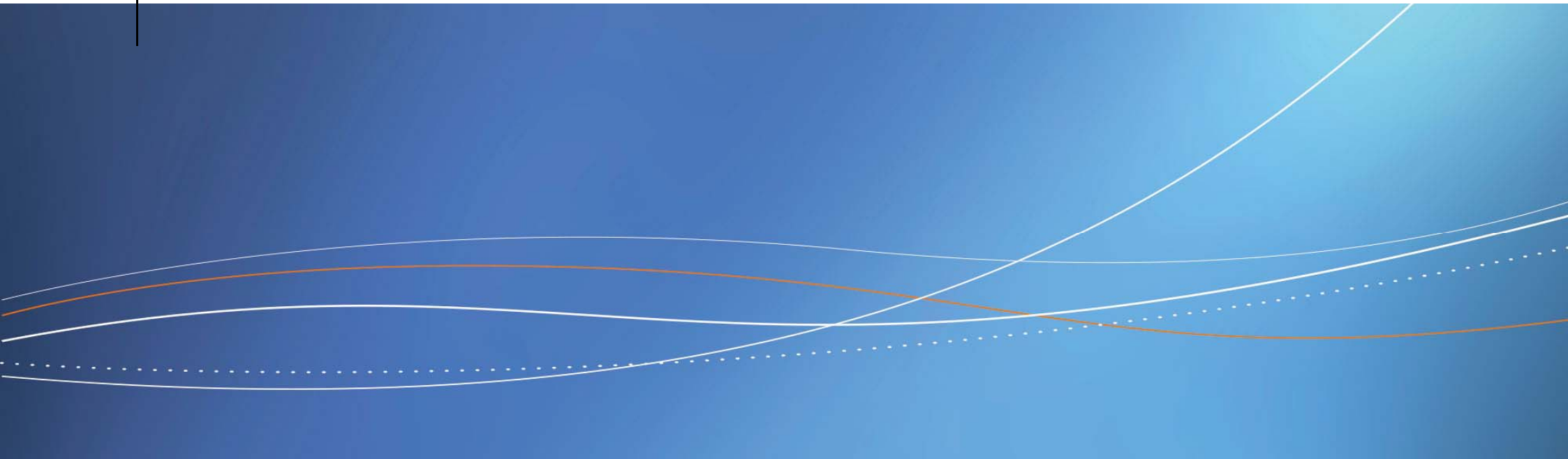


Finansdepartementet

BEPS og norsk petroleumsbeskatning

Amund Noss

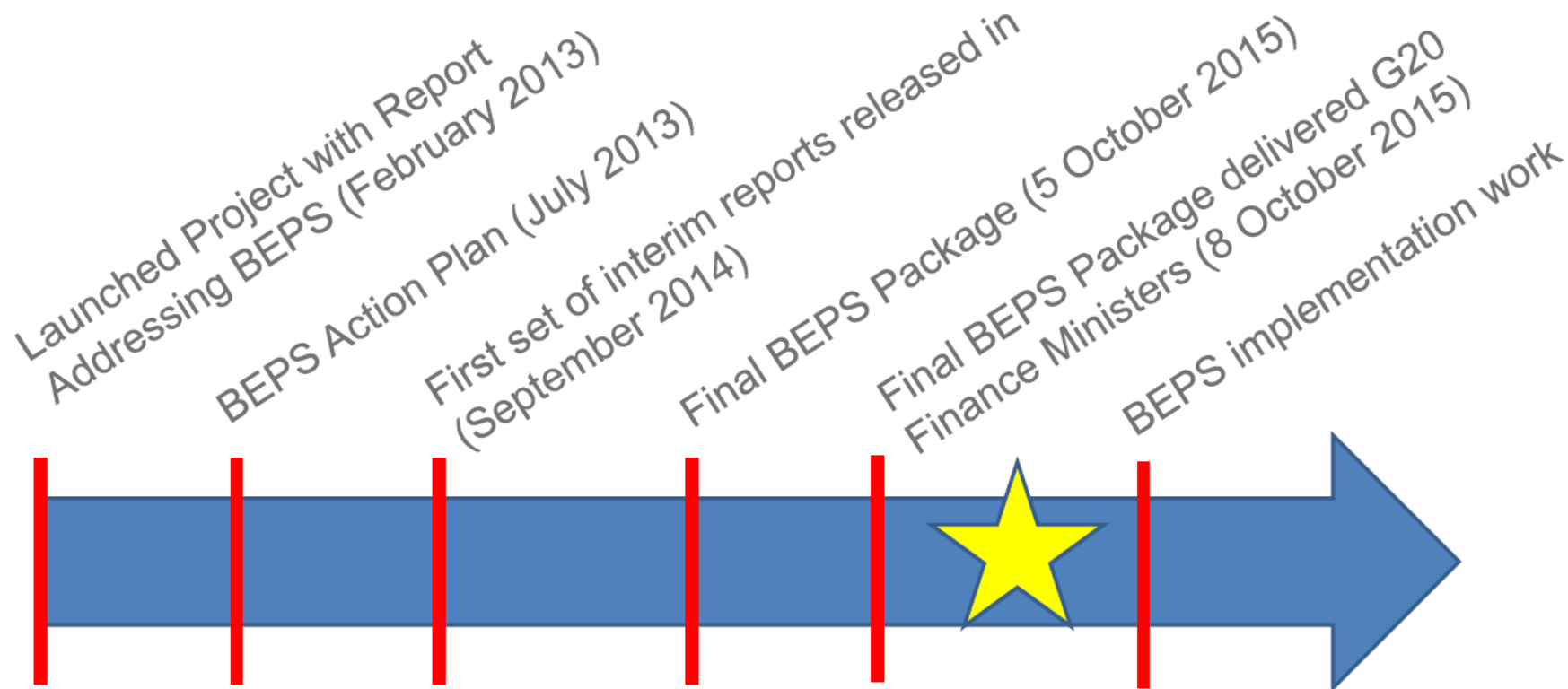
25. november 2015



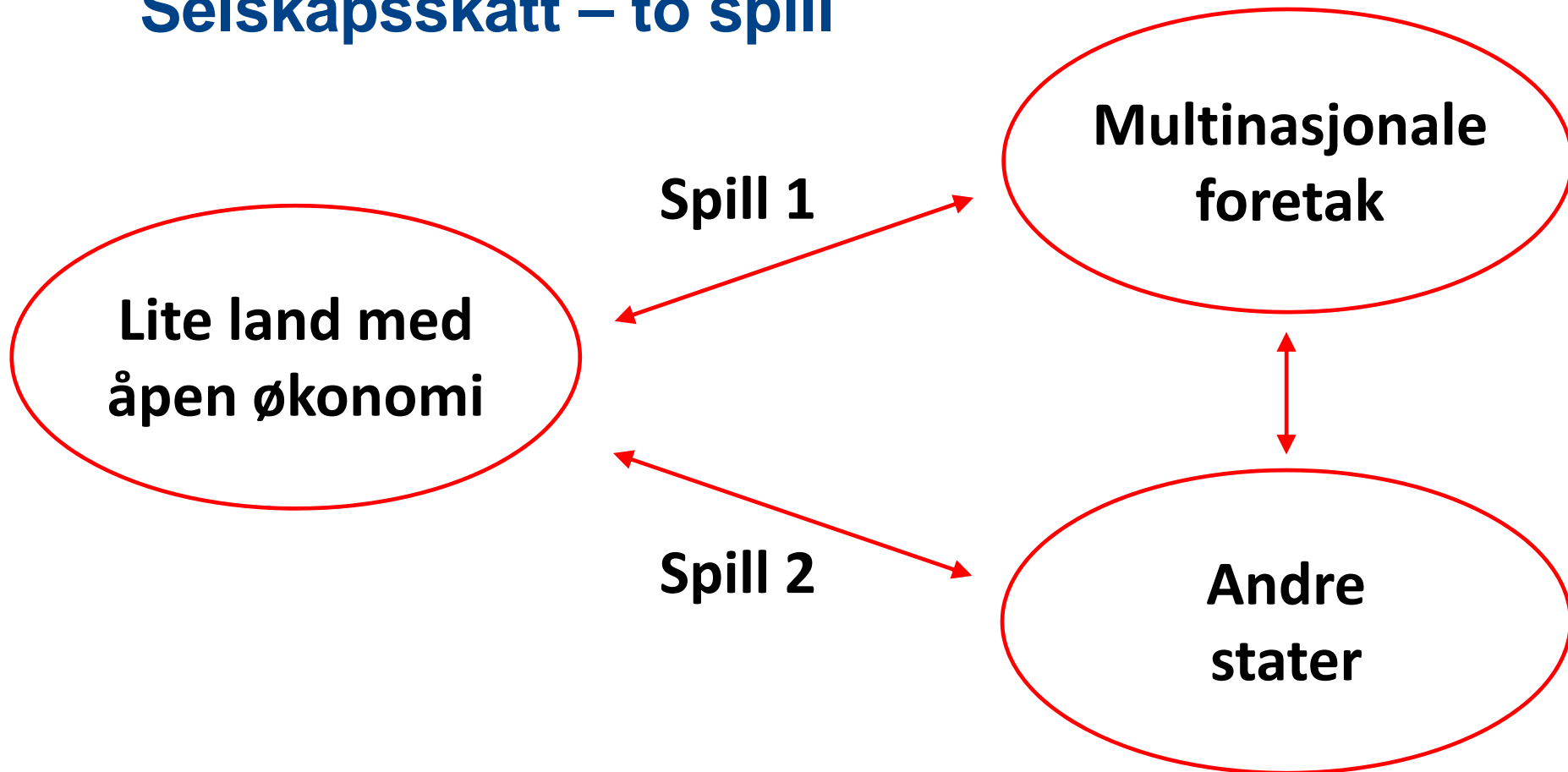
Overordnede målsetninger

- **Unngå dobbelt ikke-beskatning**
- **Unngå dobbeltbeskatning**
- **Lave etterlevelseskostnader for selskapene**
- **Godt internasjonalt administrativt skattesamarbeid**
- **Lave administrative kostnader for det offentlige**

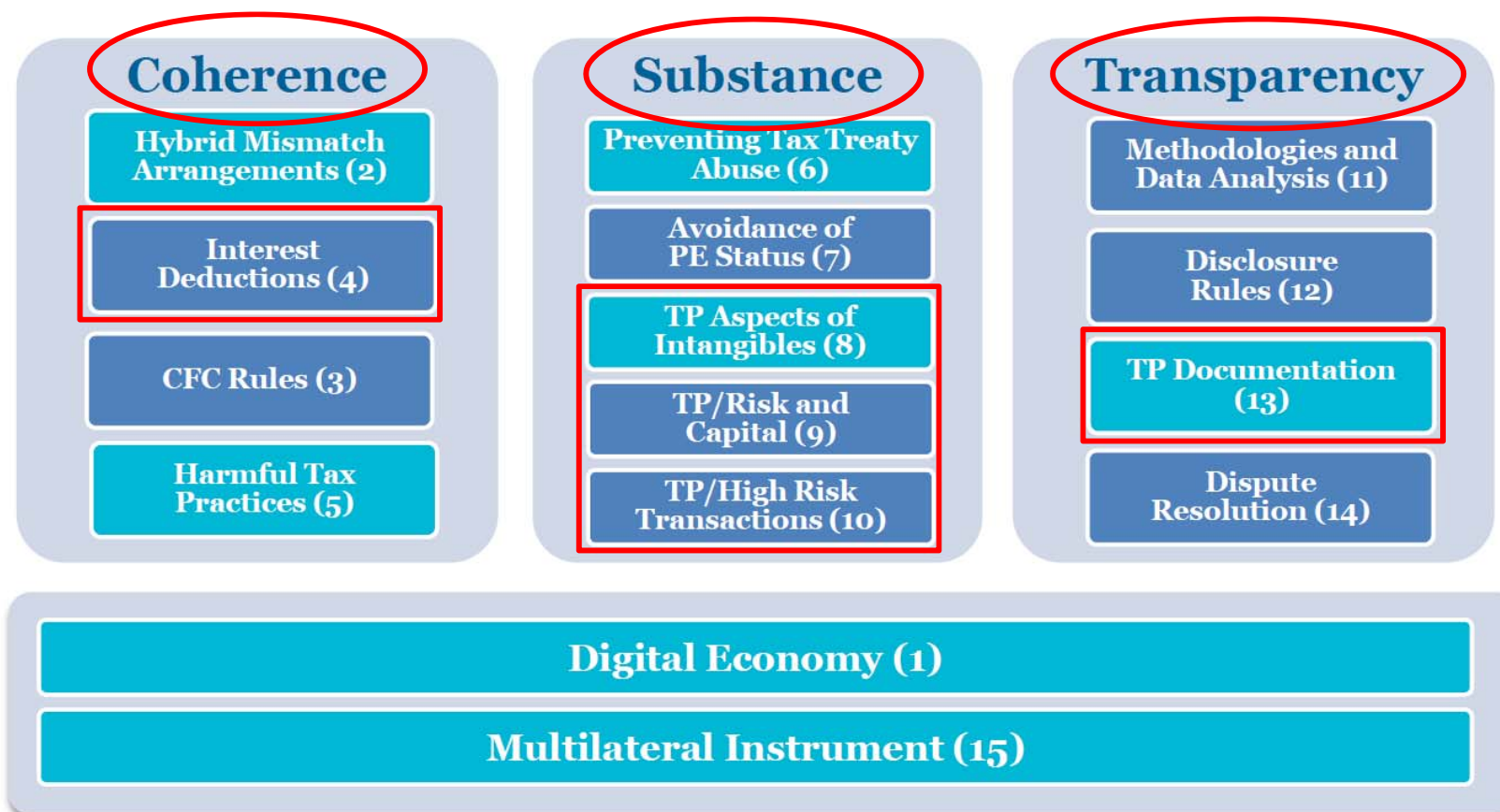
BEPS-prosjektet



Selskapsskatt – to spill



BEPS-prosjektet





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Internprising



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OECD/G20 Base Erosion and Profit Shifting
Project

Aligning Transfer Pricing Outcomes with Value Creation

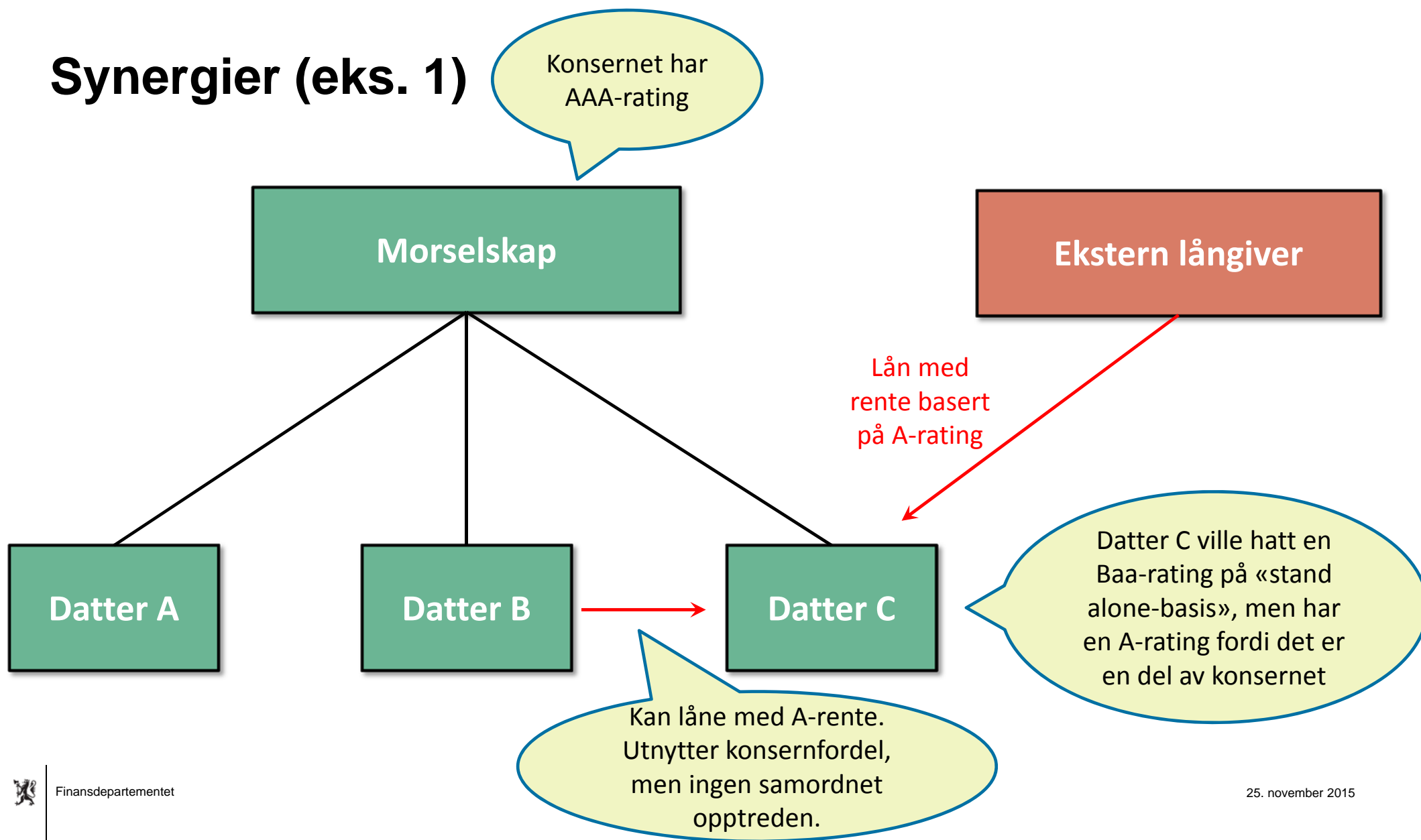
ACTIONS 8-10: 2015 Final Reports



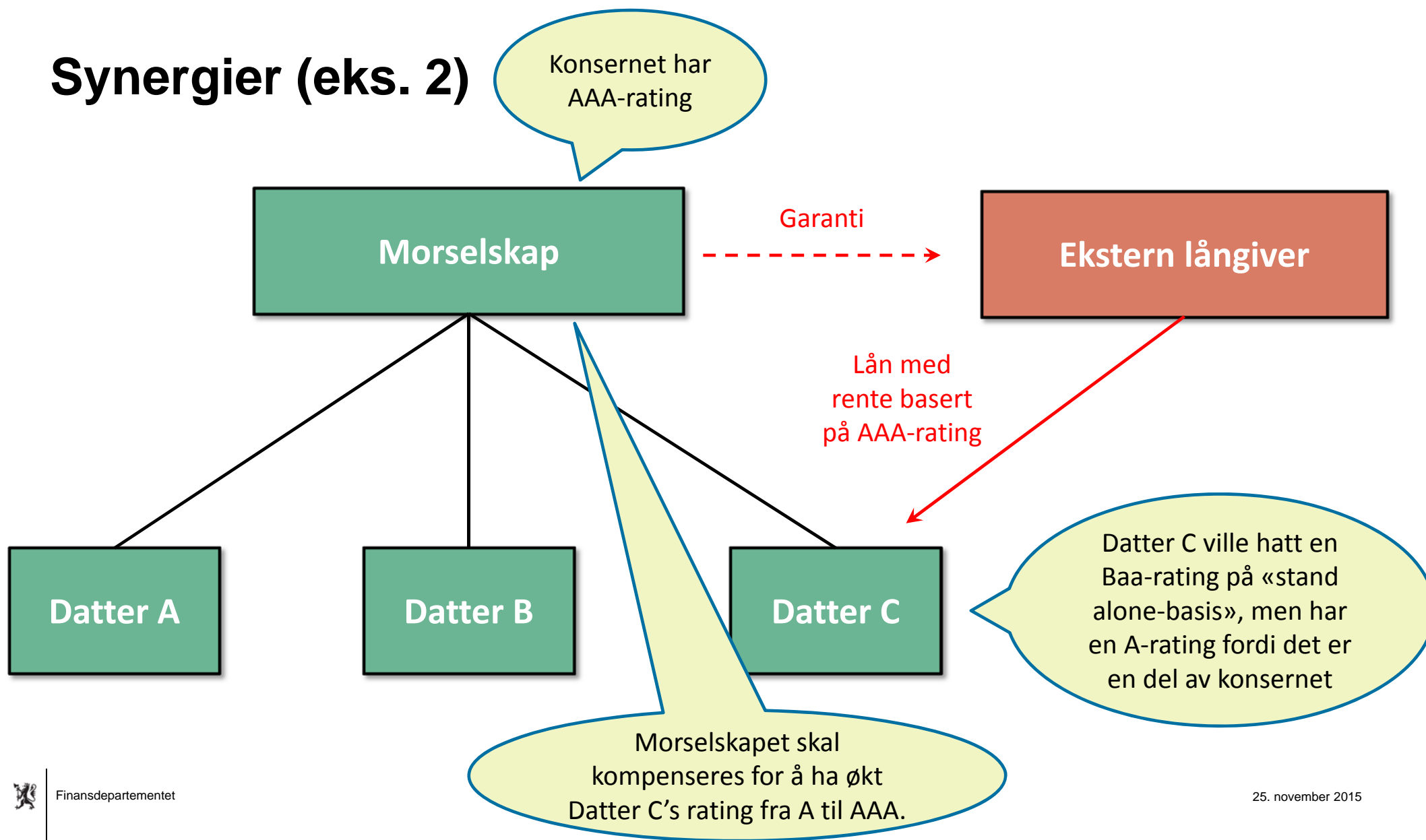
Hovedpunkter – internprising

- Kartlegge den faktiske transaksjonen
- Risiko tilordnes den parten som utøver kontroll over risiko og som har finansiell kapasitet til å påta seg risiko
- Eierskap til immaterielle verdier gir ikke i seg selv rett til overskudd, viktige funksjoner skal avlønnes i forhold til bidrag til verdiskapning
- Enheter med mye kapital, men lite funksjoner og ingen kontroll over risiko skal ikke tilordnes mer enn en risikofri avkastning
- Overskudd fra fordeler ved synergier skal tilordnes alle enheter som bidrar til slike synergieffekter

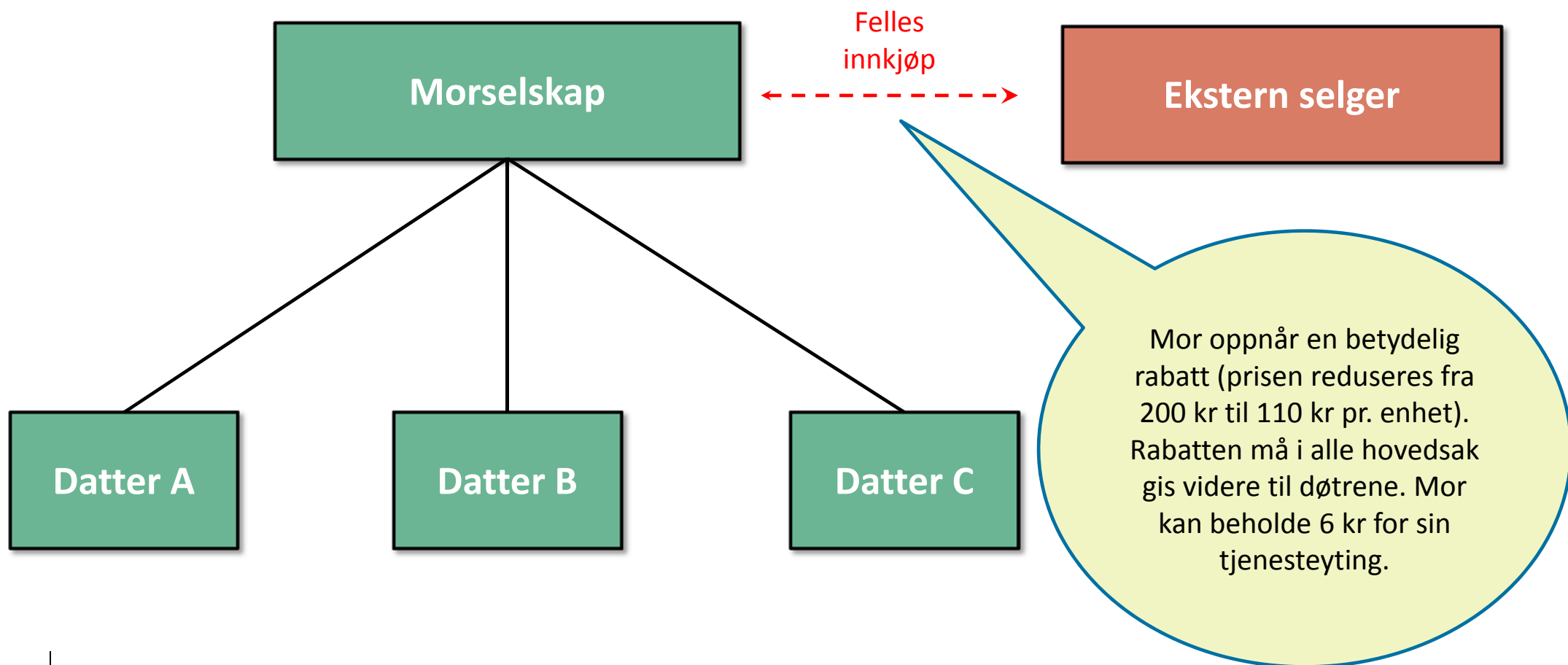
Synergier (eks. 1)



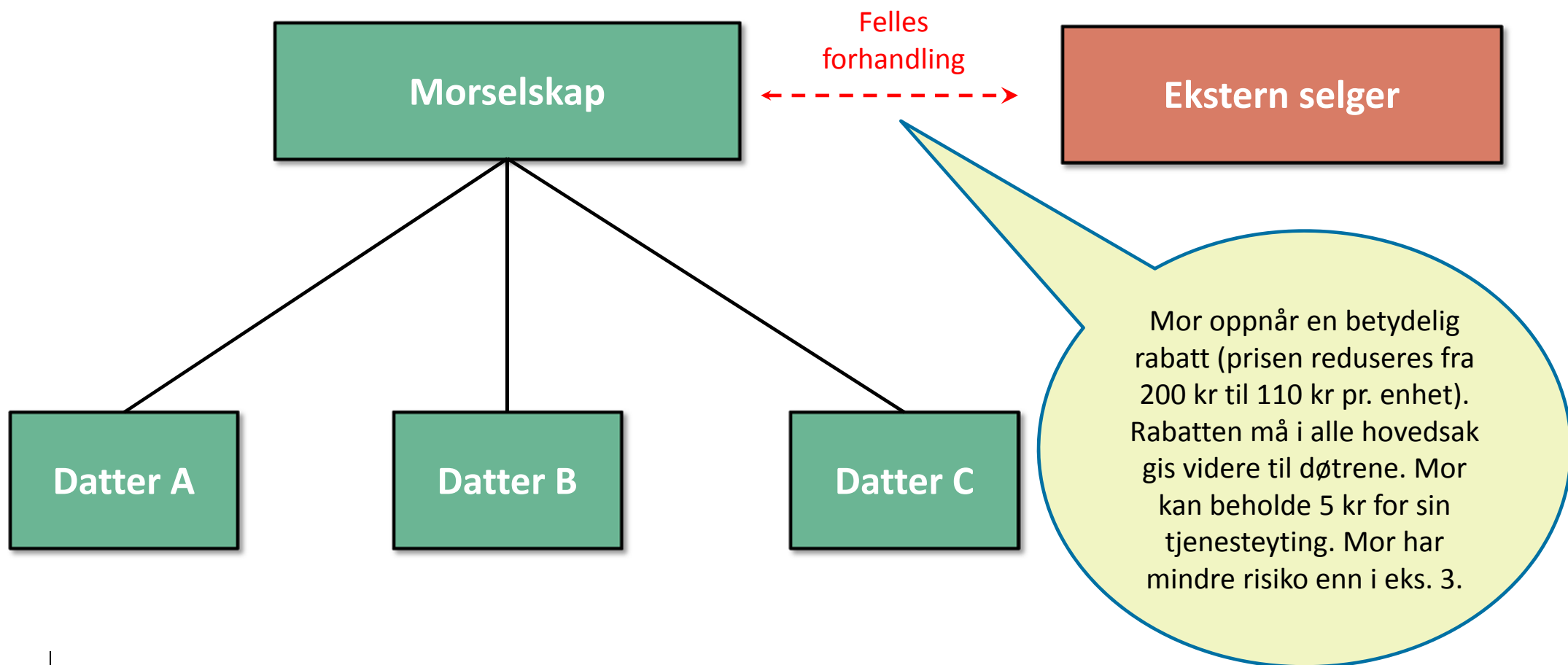
Synergier (eks. 2)



Synergier (eks. 3)



Synergier (eks. 4)



Råvarer («commodities»)

- Det presiseres at CUP-metoden kan anvendes
- Noterte priser kan benyttes i CUP-metoden
- Sammenlignbarhetsjusteringer kan være nødvendig
 - Varens fysiske egenskaper
 - Volumer
 - Kontraktens varighet
 - Leverings- og transportbetingelser
 - Forsikring og valuta
- På visse vilkår kan skattemyndighetene benytte skipningsdato som prisingstidspunkt

Råvarer («commodities»), punkt 2.16D

«... taxpayers should provide reliable evidence and document, as part of their transfer pricing documentation, the price-setting policy for commodity transactions, the information needed to justify price adjustments based on the comparable uncontrolled transactions or comparable uncontrolled arrangements represented by the quoted price and any other relevant information, such as pricing formulas used, third party end-customer agreements, premia or discounts applied, pricing date, supply chain information, and information prepared for non-tax purposes.»

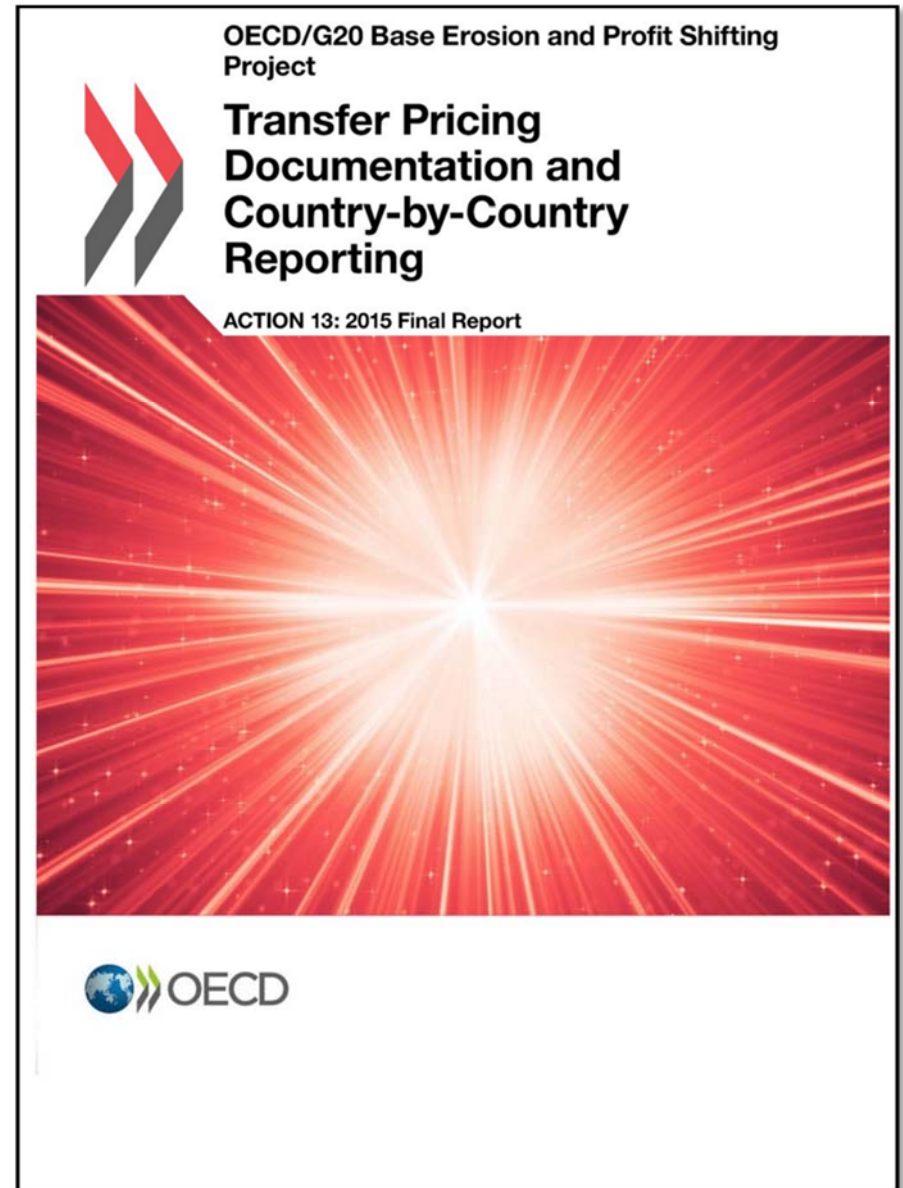


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Dokumentasjon



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Internprisingsdokumentasjon

- Landene er enige om et standardformat for internprisingsdokumentasjon
- Bedre og mer målrettet informasjon til skattemyndighetene og mindre ressurskrevende for skattyter
- Master file – organisasjonsstruktur, informasjon om global virksomhet, finansieringsstruktur og viktige immaterielle eiendeler, oversikt over gruppens finansielle posisjoner og skatteposisjoner
- Local file – informasjon om lokale enheter, transaksjoner de deltar i og finansiell informasjon

Annex I to Chapter V

Transfer pricing documentation – Master file

The following information should be included in the master file:

Organisational structure

- Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

Description of MNE's business(es)

- General written description of the MNE's business including:
 - Important drivers of business profit;
 - A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5 percent of group turnover. The required description could take the form of a chart or a diagram;
 - A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services;
 - A description of the main geographic markets for the group's products and services that are referred to in the second bullet point above;
 - A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used;
 - A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

MNE's intangibles (as defined in Chapter VI of these Guidelines)

- A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.

- A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.
- A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements.
- A general description of the group's transfer pricing policies related to R&D and intangibles.
- A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

MNE's intercompany financial activities

- A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organised and the place of effective management of such entities.
- A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

MNE's financial and tax positions

- The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- A list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.



Annex II to Chapter V

Transfer pricing documentation – Local file

The following information should be included in the local file:

Local entity

- A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- Key competitors.

Controlled transactions

For each material category of controlled transactions in which the entity is involved, provide the following information:

- A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licences of intangibles, etc.) and the context in which such transactions take place.
- The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payor or recipient.
- An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- Copies of all material intercompany agreements concluded by the local entity.
- A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.¹
- An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.

- An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
- A summary of the important assumptions made in applying the transfer pricing methodology.
- If relevant, an explanation of the reasons for performing a multi-year analysis.
- A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.
- A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.
- A summary of financial information used in applying the transfer pricing methodology.
- A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

Financial information

- Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

Note

1. To the extent this functional analysis duplicates information in the master file, a cross-reference to the master file is sufficient.



Land-for-land-rapportering

- Formålet er å innhente informasjon som kan benyttes til risikoanalyser innen internprising og generelle BEPS-risikoe
- Primær rapporteringsplikt for morselskapet
- Automatisk utveksling av rapportene
- Sekundær rapporteringsplikt for lokale enheter dersom morselskapet ikke er rapporteringspliktig i hjemlandet eller dersom avtale om utveksling av rapporter ikke foreligger
- Rapportene skal identifisere enhetene i konsernet og hvor de er hjemmehørende
- Første levering innen 31.12.2017

Annex III to Chapter V

Transfer pricing documentation – Country-by-Country Report

A. Model template for the Country-by-Country Report

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

[illegible]

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities Resident in the Tax Jurisdiction	Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence	Main Business Activity(ies)												
			Research and Development	Holding or Managing Intellectual Property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of Services to Unrelated Parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding Shares or Other Equity Instruments	Dormant	Other
	1.														
	2.														
	3.														
	1.														
	2.														
	3.														

1. Please specify the nature of the activity of the Constituent Entity in the "Additional Information" section.

Table 3. Additional Information

Name of the MNE group: Fiscal year concerned:
<i>Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.</i>

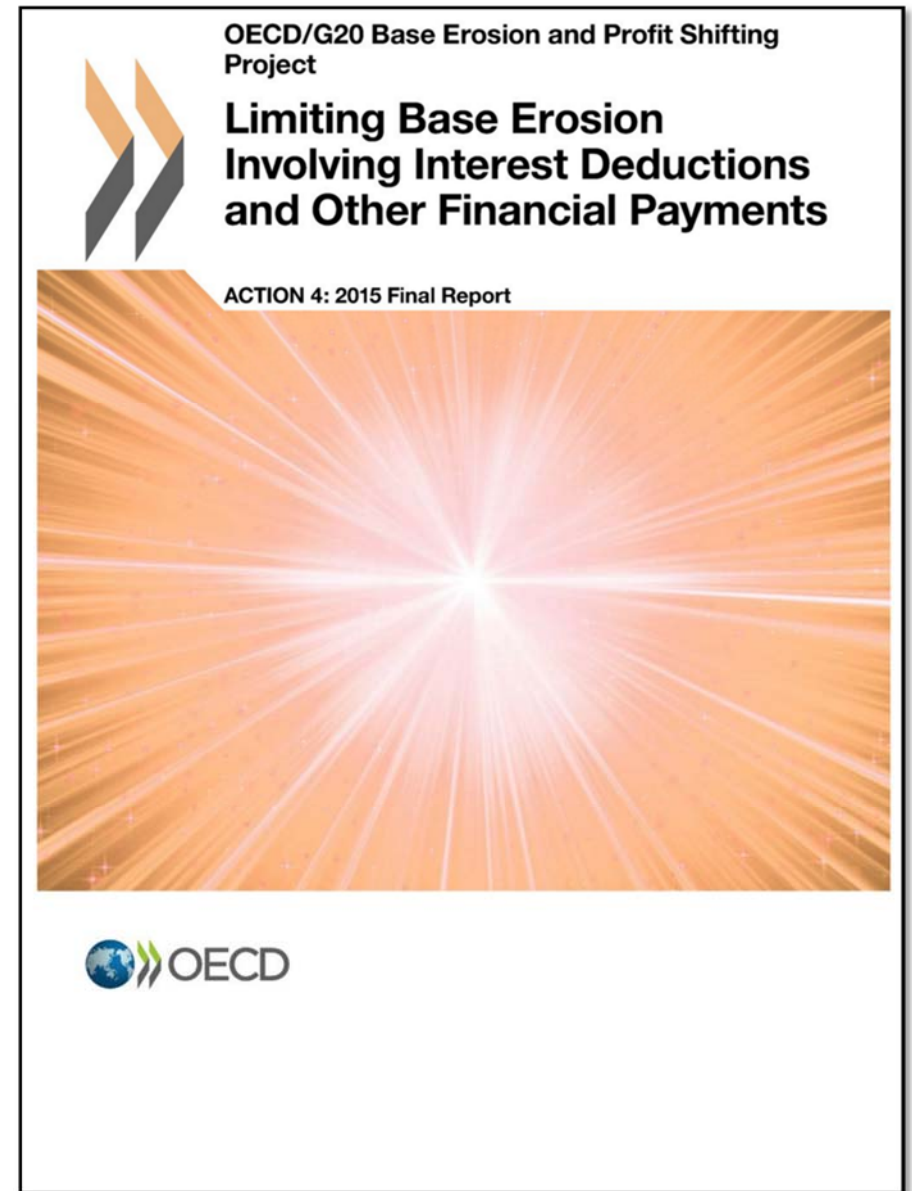


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Rentebegrensning



Finansdepartementet



Prop. 1 LS (2013-2014) punkt 4.16.4

«Etter departementets oppfatning er det ingen grunn til at petroleumsselskapene skal unntas fra en rentefradragsbegrensning i alminnelig inntekt. Det gjelder enten selskapet bare driver petroleumsvirksomhet, eller eventuelt ordinær landvirksomhet i tillegg. Det er derfor nødvendig å ha en begrensningsregel for rentekostnader i alminnelig inntekt også for petroleumsselskapene.»

Prop. 1 LS (2013-2014) punkt 4.16.4, forts.

«Tilpasningen til gjeldende bestemmelse i petroleums-skatteloven § 3 d reiser likevel særlige problemstillinger.

Det er behov for å utrede nærmere de samlede virkningene av den gjeldende regelen for finansielle poster i petroleums-skatteloven og den foreslåtte generelle begrensningsregelen..»

Prop. 1 LS (2013-2014) punkt 4.16.4

«Det foreslås derfor at petroleumsselskapene ikke omfattes av forslaget til ny rentefradragsbegrensning nå, men at departementet så snart som mulig kommer tilbake med forslag til en regel om begrensning av rentefradraget i petroleumsselskaperenes alminnelige inntekt.»

NY REGJERING



Frykt for Schjervas siste stikk

FINANS: Den rød-grønne regjeringen vil ta multinasjonale selskaper som bedriver sleip skatte-tilpasning, men rammer også Coop, NSB og Avinor i samme slengen.

SVEN CHR. STENVAAG
AV OLAV STENVAAG/NTB

Det er ikke lett å ta multinasjonale selskaper som bedriver uansket skatte-tilpasning over landegrensene.

Men ingen skal hevde at Finansdepartementet og statssekretær Roger Schjerva ikke har forsøkt. I april kom departementet med et lovforslag som setter en grense for hvor store interne rentekostnader i et konsern man kan få fradrag for.

Rent praktisk går reglene ut på – og her blir det noe detaljert – at ingen virksomhet i Norge skal ha fradrag for gjeldsrenter betalt til en nærtstående part dersom de samlede renteutgiftene til foretaket overstiger 25 prosent av skattemessig EBITDA. Reglene vil bare gjelde hvis rentefradraget overstiger én million kroner pr. år.

De fleste høringsvarene til departementet gir uttrykk for at forslaget vil lykkes med å ramme de multinasjonale selskapene – og veldig mange andre.

– Dette er skatterettens svar på bredspektrert anti-boikott, sier advokat Frode Olsen i Kluge, som bistår flere klienter hvis forslaget blir gjennomført.

Advokatforeningen akkrer følgende i sitt høringsvar:

«En rekke selskaper som ikke



■ - Langt alvorligere enn formueskatten, sier advokat

BARNET UT MED BADEVANNET? Statssekretær Roger Schjerva skal ta multinasjonale selskaper, men rammer også Spørsmålet i Oslo, NSB og Avinor. FOTO: ANNE HANSEN



Skattebombe fra Schjerva

Dette er foreslått

- Finansdepartementet ønsker å begrense fradraget for innbetalte skattebetalinger i Norge som kan tas til nytte av andre land (nærstående part).
- For å sikre innbetalte fradrag for rentekostnader som overstiger 25 prosent av skattemessig EBITDA, avsluttes. Andelen på 25

drag. Det er ikke bare fradraget for interne renter som eventuelt begrenses.

- Det foreslås at de som skal gi gjeld for aksje selskaper og gjeld for aksje selskaper, som ligner som et aksjeselskap, vil bli. Videre foreslås at aksje selskaper og aksje selskaper, som ligner som et aksjeselskap, vil bli.



Rentebegrensning

	Regjeringens forslag for 2016	Scheel-utvalgets anbefaling
Fradragsrammen	25 pst. av skattemessig EBITDA	45 pst. av skattemessig EBIT
Hvilke renteutgifter skal avskjæres?	Bare interne renter, men eksterne renter «fyller opp» fradragsrammen	Alle renteutgifter
Minsteterskel	5 millioner i netto rentekostnader	1 million i netto rentekostnader

***De minimis* monetary threshold to remove low risk entities**

Optional

Based on net interest expense of local group

+

Fixed ratio rule

Allows an entity to deduct net interest expense up to a benchmark net interest/EBITDA ratio

Relevant factors help a country set its benchmark ratio within a corridor of 10%-30%

+

Group ratio rule

Allows an entity to deduct net interest expense up to its group's net interest/EBITDA ratio,
where this is higher than the benchmark fixed ratio

Option for a country to apply an uplift to a group's net third party interest expense of up to 10%

Option for a country to apply a different group ratio rule or no group ratio rule

+

Carry forward of disallowed interest /unused interest capacity and/or carry back of disallowed interest

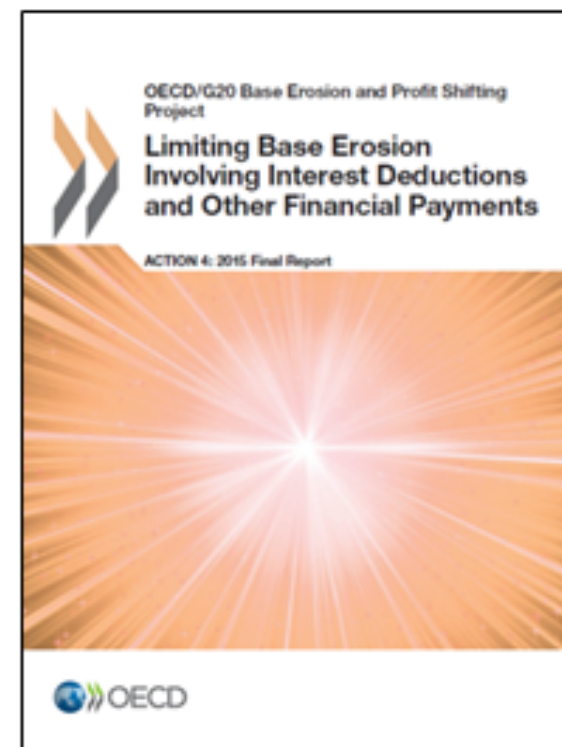
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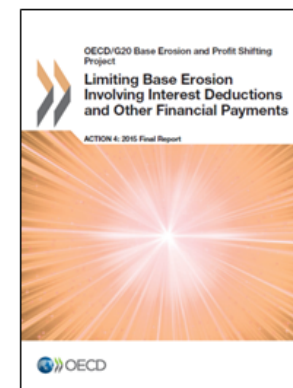
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Targeted rules to support general interest limitation rules and address specific risks

+

Specific rules to address issues raised by the banking and insurance sectors





87. However, groups in certain sectors may benefit from economic rent that means they are able to generate high levels of EBITDA, which under the general approach described in this report could give rise to relatively high levels of net interest deductions. A country may therefore choose to apply a fixed ratio rule more strictly to groups in these sectors. For example, groups in sectors which benefit from economic rents may be subject to a lower benchmark fixed ratio, or the calculation of entity EBITDA may be adjusted to strip out the effect of the economic rent.



Finansdepartementet

