FINLAND

FINLAND

INTERNATIONAL DEVELOPMENTS

1. WHAT ARE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY WHICH ARE RELEVANT FOR M&A DEALS AND PRIVATE EQUITY?

The most relevant recent developments in Finland relate closely to the BEPS project and case law giving insight on the application of the general anti-avoidance rule. The Finnish Tax Administration is aggressive in challenging existing structures and arrangements, which places taxpayers in position to evaluate and document their actions prudently.

In 2016 the Finnish Supreme Administrative Court issued two precedents (KHO 2016:71 and KHO 2016:72) on debt push down having importance for the deductibility of interest expenses in taxation, allocation of income and assets to permanent establishments and for application of the general anti-avoidance rule. Both cases concerned a situation where a foreign group company had a branch in Finland to which another group company´s shares were sold and the sale was financed with an intra-group loan. The deductibility of interest expense resulting from an intra-group sale of shares was denied from a Finnish branch in both cases. In the former case, denial based on the interpretation of the income tax treaty whereby the shares acquired by the branch were not treated as assets belonging to the branch and therefore related acquisition debt interest was deemed non-deductible. In the latter case, the Court applied the general anti-avoidance rule and it held that the structure was missing sufficient commercial justification.

In the private equity field, the tax treatment of carried interest income has been subject to intense public discussion. In tax practice, the Finnish Tax Administration has classified carried interest income as earned income, but recently, the Supreme Administrative Court held in force an Administrative Court ruling in favor of taxpayers stating that carried interest was treated as capital income instead of earned income. Moreover, recent case law has reduced the attractiveness of PIK loans provided by private individuals. In private equity deals, partnership loans have been replaced by preference shares. Additionally, interest deduction limitations that entered into force in 2014 have impacted structuring of the deals.

2. WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

Finland has been active in putting the BEPS actions into practice. Finland has already enacted restrictions on deductibility of interest and has CFC legislation in place. Additionally, Finland has implemented country-by-country reporting rules that apply to accounting periods ending in year 2017 or later.

The Finnish Ministry of Finance has released its proposal relating to Finland's approach with respect to the multilateral instrument. According to the proposal, Finland would implement only the minimum standards meaning that it would make reservations to other articles. Therefore, among other things, the existing provisions concerning permanent establishments in Finland's current tax treaties remain unchanged.

With respect to BEPS action 6, the Finnish Ministry of Finance has not expressed intention to take other actions than to implement related minimum standards in the multilateral instrument. According to the proposal, Finland would fulfil the minimum standard of Article 7 of the multilateral instrument by adopting the Principal Purpose Test. Finland would not adopt the additional provision that gives the competent authority the right to grant the treaty benefits even though the Principal Purpose Test provision applies.

Based on the proposal, Finland would adopt the other minimum standards in the following way:

- **Article 6 - Purpose of a Covered Tax Agreement:** Finland would amend the introductory paragraph describing the purpose of the tax treaty so that, in addition to the elimination of double taxation, it is expressly stated that the intention is not to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance. Finland would not include the preamble text, which indicate the desire to develop economic relations and extend cooperation in tax matters.
- **Article 16 - Mutual Agreement Procedure:** Finland would adopt to its tax treaties the minimum standard by including paragraphs 1 to 3 in Article 25 of the OECD Model Tax Convention and the amendment concerning the taxpayer's right to initiate a mutual agreement procedure in the source state in addition to their residence state. Finland would make a reservation according to which the updated Article on mutual agreement procedures would apply to tax periods subsequent to the entry into force of the multilateral instrument.
- **Article 17 - Corresponding Adjustments:** Finland would adopt the provision on corresponding adjustments to those tax treaties that do not currently include the provision.
- **Mandatory binding treaty arbitration:** Finland would apply the arbitration process of the multilateral treaty with certain reservations. Finland would opt for the "final offer" process in which an arbitration panel would select one of the competent authorities' proposed resolutions as its decision. Arbitration would not be available if a decision on the issue has already been rendered in a domestic process. Admittance to the arbitration process would be limited to cases concerning transfer pricing or permanent establishments and to tax periods subsequent to the entry into force of the multilateral instrument.

New provisions of the Parent-Subsidiary Directive have been implemented in Finnish tax law with the effect from the beginning of 2016. The amendments included a Limitation-On-Benefits (LOB) rule and a General Anti-Abuse Rule (GAAR).

The LOB rule tackles the use of hybrid instruments in tax planning i.e. situations in which payments are treated as deductible expenses in the source Member State and as a tax exempt dividend in the recipient Member State. As an exception to the general rule of tax exemption of dividends provided by the Parent Subsidiary Directive, the dividend is taxable if either one of the following two conditions are met:

- The payment is deductible for the distributing company; or
- The arrangement in question has as a main purpose or as one of the main purposes to obtain tax benefits and the arrangement is not genuine having regard to all relevant facts and circumstances.

The general anti-abuse rule introduces a principal purpose test, providing that the arrangement is considered not to be genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

The Ministry of Finance is currently surveying the economic side of the implementation of the Anti-avoidance directive (ATAD). The report on the economic side of the ATAD implementation is estimated to be released in spring 2017. The legislative work relating to the implementation of the ATAD will start after the report has been released.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES AMONG ACQUISITIONS MADE THROUGH A SHARE DEAL VERSUS AN ASSET DEAL IN YOUR COUNTRY?

A. Share deal

Tax disadvantages:

A share deal may be less preferable from the buyer's perspective for two reasons. Firstly, the transfer tax of either 1.6% or 2.0% of the acquisition price is levied on the transfer of other than publicly traded shares in Finnish companies. If the value of the company is mainly based on other aspects than the securities or real estate it owns, then the basis for transfer taxation can be significantly higher in comparison to an asset deal.

Secondly, the buyer cannot depreciate the acquisition cost of shares. The depreciation of the target company's assets may be continued within the company according to the depreciation plan applied by the seller, but goodwill paid on the shares cannot be depreciated.

In a share deal, previous losses of the target company may be lost (or retained) after a qualified change in ownership.

Additionally, the buyer has to deal with all underlying tax risks relating to the purchased company even though depending on the circumstances the seller may be liable to reimburse additional taxes due.

A sale of shares is exempt from VAT. From the seller's point of view, a disadvantage is that the deduction of VAT incurred on transaction costs is denied as being considered to relate directly to the VAT exempt sale of shares.

Tax advantages:

Share deals are typically preferred by the sellers because under certain conditions the participation exemption may apply in which case the sale of the shares would be tax exempted.

Confirmed tax losses of the target company may under certain conditions be utilised against the target company's future profits despite of the change in the ownership. Additionally, in a share deal, a buyer may gain transfer tax savings, if assets of the target company comprise of real properties.

B. Asset deal

Tax disadvantages:

A transfer tax of 1.6% for Finnish non-listed securities, 2.0% for housing or real estate companies and similar and 4.0% for Finnish directly-owned real estate is levied in cases where these assets are included in the acquired assets. With regard to real estate, transfer in a form of shares is therefore more advantageous than transferring the real estate directly. Another drawback is that tax losses may not be transferred in an asset deal.

From the sellers' perspective, asset deals may not be tax efficient because selling the assets may give rise to a taxable profit at the level of the target company, and repatriation of the profits to the shareholders may be subject to tax. Additionally, the seller has to deal with the remaining company and its potential tax liabilities.

Tax advantages:

An asset deal is generally preferable from the buyer's perspective. The acquisition cost is allocated to the acquired assets often resulting in a step-up in the book values of the assets in question. The buyer may begin to make depreciations on these new values (in accordance with general depreciation rules). The purchase price may also be allocated to goodwill, which may also be depreciated.

An asset deal is out of scope of VAT when it fulfills the requirements set out in the VAT legislation. A case-by-case analysis is usually required to confirm the VAT treatment. According to the current tax practice, the transaction costs are generally considered over-head expenses of the seller, and therefore the VAT incurred on the costs is deductible in the proportion of the taxable activities of the seller. In comparison to a sale of shares, this is an advantage for the seller.

From the seller's perspective, an asset deal may be a feasible option if the company has confirmed losses that can be utilised against taxable profit arising in the asset sale or if the conditions for a participation exemption are not fulfilled.

BUY-SIDE

4. WHAT STRATEGIES ARE IN PLACE, IF ANY, TO STEP UP THE VALUE OF THE TANGIBLE AND INTANGIBLE ASSETS IN CASE OF SHARE DEALS?

No special provisions in the Finnish tax law provide for a step-up in the value of the target's underlying assets upon the acquisition of its shares. The acquisition cost of the shares is deductible from sales proceeds if the shares are later sold by the purchaser unless a participation exemption applies.

5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL IN YOUR COUNTRY?

For tax purposes, goodwill (i.e. the difference between the target's book value and the purchase price paid for it that cannot be specifically allocated to other assets) is regarded as an intangible asset that cannot be separately disposed of or sold. In an asset deal the possible purchase price paid for goodwill is depreciable during the probable economic impact period of goodwill (maximum ten tax years). The value of the goodwill is allocated to the number of years and the depreciated amount remains the same each year.

In a share deal the goodwill cannot be amortised or depreciated for tax purposes. The entire acquisition cost of shares usually becomes deductible only in a subsequent transfer unless the participation exemption applies.

6. WHAT ARE THE LIMITATIONS TO THE DEDUCTIBILITY OF INTEREST ON BORROWINGS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

Deductibility of intra-group interest expenses is subject to limitations that are not limited to acquisition debt. Limitations concerning the tax deductibility of interest payments have been applicable to corporations, partnerships, corresponding foreign entities and their permanent establishments as of the fiscal year 2014. The limitations are applied only if the interest expenses exceed the interest income received by the company. A general safe haven of EUR 500,000 is applied; if net interest expenses (including third party and related party interests) exceed EUR 500,000 the interest limitation will nevertheless be applied to the entire amount.

Interest may become non-deductible if such net interest expenses exceed 25% of the company's tax EBITDA (taxable business profits added with the aggregate amount of interest costs, depreciations and group contributions received; and deducted with the amount of group contributions granted).

Interest payments for third party loans are currently not subject to limitations. However third party loans will be deemed as intra-group loans if a related party pledges a receivable to an unrelated party as security for the loan and the unrelated party provides a loan to another related party, or the loan from an unrelated party is de facto a back-to-back loan from a related party. Further, interest expenses will remain fully deductible if the equity ratio of the company is equal to or higher than the consolidated equity ratio of the group.

The regulation allows an indefinite carryforward of interest expenses that cannot be deducted based on the above-mentioned restrictions.

In addition, transfer pricing provisions, general anti-avoidance provision and the provision on hidden profit distributions in Finnish domestic law may be applied to deny tax deductibility of interest expenses.

The limitation rules may change as a result of the EU anti-avoidance directive and may thereafter apply also third party interest expenses and real estate companies and other non-business entities that are not currently covered.

7. WHAT ARE USUAL STRATEGIES TO PUSH-DOWN THE DEBT ON ACQUISITIONS?

The use of a Finnish Special Purpose Vehicle (SPV) by a foreign buyer to acquire a Finnish target is the preferred strategy to push down debt for most acquisitions. The SPV is financed by loans from third parties or foreign group companies, which are often located in a jurisdiction with a low corporate income tax rate. As the deductibility of related party interest expenses has been restricted, feasibility of the debt structure has to be evaluated in detail.

Following the acquisition, the target's profits may be offset against the SPV's interest expenses under Finnish group contribution rules. Alternatively the target may be merged with the SPV or liquidated to consolidate operating profits and the interest expenses or acquisition loans.

According to Finnish group contribution rules, eligible contributions from an affiliated company are deducted from taxable profit of the contributing company and are added to the recipient company's taxable profit. Same rules apply to a Finnish permanent establishment of a foreign head office if it is tax resident in an EU Member State or in a country with which Finland has concluded a tax treaty and the treaty contains a non-discrimination article.

All these strategies have to be carefully analysed to avoid the application of anti-abuse provisions in Finland, as well as to comply with transfer pricing rules. The recent case law denying deductibility of interest expenses arisen from share acquisition debts of a Finnish branch should not impact typical debt push-down strategies.

8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

Finland has no special provision that would give tax incentives for equity funding.

9. ARE LOSSES OF THE TARGET COMPANY(IES) AVAILABLE AFTER AN ACQUISITION IS MADE?

As a main rule, tax losses incurred may be carried forward for the subsequent 10 tax years. However, if more than 50% of the shares in a company has changed hands during the loss year or thereafter, the right to carry forward losses is forfeited. Also if a corresponding change of ownership has taken place in a company owning at least 20% of the shares in the loss-making company, the losses are forfeited. The Finnish Tax Administration may upon application by the taxpayer and under certain conditions grant a special permission to utilise losses despite of the change in the ownership.

For a listed company the right to carry forward losses is not forfeited unless more than half of the non-listed shares change hands (i.e. changes in the ownership of listed shares do not result in forfeiture of losses). Changes in ownership of listed shares do not affect losses of companies owned by listed companies either.

Transfer of losses in a merger or a demerger is subject to conditions fulfillment of which has to be evaluated case by case.

10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?

The statute of limitation in direct taxation was reduced from five years to three years starting from 2017 meaning that financial years ending in 2017 are subject to new limitations. Financial years ended in 2016 and earlier are still covered by five years' statute of limitation. The statute of limitation is calculated from the beginning of the calendar year following the tax assessment meaning that tax years are in principle open for reassessment for 4 (previously 6) years. If the decision was made before 1 January 2017, the statute of limitation is five years from the beginning of the calendar year following the tax assessment. In transfer pricing related and certain other matters, the statute of limitation of the Finnish Tax Administration is extended to five years.

From an income tax perspective, tax attributes such as tax losses and non-deductible interest expenses are of essence in the tax due diligence and should be observed in the structuring of the transaction. Additionally, the arm's length nature of the transactions between the shareholders and the target company and intra-group transactions should be covered in the review.

Recently, Finnish tax authorities have scrutinised in transfer pricing audits especially intra-group financing transactions, transfers of valuable intangibles between group entities and business reorganisations. If such arrangements are in place in the target company, they should be identified and analysed in a tax due diligence.

11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?

A transfer tax of 1.6% of the acquisition price is levied on the transfer of shares and other securities in Finnish companies. For real estate and housing companies, the transfer tax is 2%. As a main rule, transfer tax is not applicable to trade of shares in publicly listed companies. Additionally, transfer of shares between parties not tax resident in Finland are exempted from Finnish transfer tax unless the target is directly or indirectly a Finnish real estate or housing company. The purchaser is liable to pay the transfer tax. In addition to the acquisition price of the shares, the transfer tax base may include other payments benefiting the seller such as repayment of a target company's loan to the seller's (by the buyer).

12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?

The costs accruing directly from facilitating the acquisition, such as fees from legal and other professional services and transfer tax are included in acquisition costs of shares. The buyer cannot deduct or depreciate the acquisition cost of the shares in taxation but when determining taxable capital gain in potential future share sales the acquisition costs are deducted from the sale price (if participation exemption is not applicable).

Financing costs related to acquisition of shares are deducted as yearly expenses i.e. they are not included in the shares' acquisition costs. This means that costs relating to financing or refinancing of the target company should be deductible, although acquisition cost of the acquired shares are not subject to depreciations. Due to this divergent treatment, drawing the line between the financing costs and other cost relating to the acquisition may be of essence from a tax point of view. Especially with regard to shares to which participation exemption is applicable, the classification of costs as acquisition cost of shares may cause non-deductibility of costs.

13. CAN VAT (IF APPLICABLE) BE RECOVERED ON ACQUISITION COSTS?

Yes, VAT on acquisition costs can be recovered by the buyer in the proportion the company acquiring the shares or assets has VAT taxable activities such as supplies of taxable management services. In addition to the taxable activity, a certain level of substance is required from the holding company (namely, at least one employee). If the acquisition is made by a pure holding company that does not have any taxable activities and is only passively involved in the management of its subsidiaries, VAT cannot be deducted and remains as a final cost for the buyer. It should also be noted that only the company acquiring the shares or assets may deduct the VAT, as the transaction costs are considered to relate to the acquirer's activities (i.e. a deduction by another group company which didn't make the acquisition is not possible).

14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION BY FOREIGN COMPANIES?

A company subject to only limited tax liability in Finland is taxed in Finland only for the Finnish source income unless the person has a permanent establishment in Finland. Capital gains derived from the sale of shares are not regarded as Finnish source income under Finnish legislation, as long as the company's assets do not essentially consist of real estate property.

Dividend distributions made by a Finnish company to a foreign corporate recipient are generally subject to withholding tax at 20%. However, this rate may be reduced in situations such as the following:

- Situations covered by the Parent-Subsidiary Directive;
- Situations where a tax treaty provides for a lower withholding tax rate;
- With regard to dividends paid to other EEC Member States, where the dividend would be tax exempt in similar domestic relations, assuming an agreement concerning exchange of information (or the Directive 77/799/EEC) is applicable between the countries, and assuming that the dividend recipient does not have the possibility of full tax credit in its home country.

Since dividends are tax exempt in most domestic relations between limited companies, the exemption actually applies to dividends paid to most EU Member States even if the Parent-Subsidiary Directive is not applicable.

As for acquisitions of Finnish entities by foreign partnerships or acquisitions of stakes in Finnish partnerships, the passive ownership could raise a permanent establishment issue. Therefore such acquisition involving a partnership should be carefully analysed and structured.

15. CAN THE GROUP REORGANISE AFTER THE ACQUISITION IN A TAX NEUTRAL ENVIRONMENT THROUGH MERGERS OR A TAX GROUP?

As an EU Member State, Finland has harmonised its tax provisions for tax neutral corporate transactions in accordance with the Merger Directive. These rules apply to reorganisations involving entities in EU/EEC and to purely domestic transactions. Additionally, according to old case law, tax neutral reorganisation provisions should apply also to mergers involving parties residing in tax treaty states, if the merger meets conditions for a merger under the resident state's legislation. However, share exchanges where the receiving company has resided in a non-EU/EEC country have not been treated as tax neutral.

Tax neutral mergers, divisions and transfers of assets are commonly utilised as pre or post-acquisition measures. An exchange of shares is mostly used as a means of carrying out the acquisition itself. Tax neutrality of reorganisations in effect means that arrangements do not cause income tax implications either for companies participating in the arrangements or their shareholders. Tax neutrality is often subject to fulfillment of certain conditions, for example in mergers, divisions and exchanges of shares, there are restrictions on the amount of cash contributions.

16. IS THERE ANY PARTICULAR ISSUE TO CONSIDER IN CASE OF TARGET COMPANIES OF WHICH MAIN ASSETS ARE REAL ESTATE?

A real estate company is not a specifically defined legal term in Finnish law even though it is commonly used in practice; real estate companies can be organised e.g. as ordinary limited liability companies, residential housing companies or mutual real estate companies (MRECs). MRECs are limited liability companies with purpose to own and manage at least one building or a part of a building. Its shares are attributable to certain parts of the real property and based on their shareholding shareholders are entitled to hold and control the respective parts of the real estate. Therefore, for example, rental income arising from the leasing of the real estate accrues directly to the shareholders. Typically, income received by MREC comprises of monthly charges that the shareholders pay to the mutual real estate company.

Regular real estate companies (RECs) operate just as any limited liability companies – i.e. there is no flow-through of income to the shareholders and taxable profits are expected to be incurred on the REC level.

Residential housing companies, MRECs, RECs and other real estate companies are taxed under the Income Tax Act as they are not considered to have business operations. Due to this, real estate companies are not currently subject to interest deduction limitations.

Many of Finland's Double Taxation Agreements (DTAs) include a paragraph entitling Finland to tax income arising from a shareholding in a Finnish company which owns real estate in Finland and shareholders of which are entitled to use the real estate based on their shareholding. Typically, Finland's taxing right also covers capital gains derived from the disposal of shares in real estate companies the assets of which mainly comprise of directly or indirectly owned real property located in Finland. However, there are also DTAs not allowing Finland to tax income or capital gains relating to such shares.

Capital gains derived by Finnish and foreign corporations (provided Finland is allowed to tax the capital gains) from the sale of RECs are subject to corporate income tax. Specific transfer tax provisions apply to sales of real estate companies.

From the VAT point of view, the taxability of the activities of the real estate company should be carefully analysed prior to the transaction to ensure the deductibility of VAT incurred on the transactions and operations going forward. VAT deduction may be limited due to the fact that leasing activities are VAT exempt (with an option to VAT under certain circumstances).

17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?

In the Finnish tax system, corporations are taxed separately and there is not any tax grouping regime. However, Finnish group companies and Finnish permanent establishments can under certain conditions balance their profits and losses with group contributions. Eligible contributions from an affiliated company are deducted from taxable profit of the contributing company and are added to the recipient company's taxable profit.

The applicability requires among other things that both the contributor and the receiver of a group contribution are resident in Finland and that they carry on business operations. Additionally, between the contributor and the receiver has to be a 90 % direct or indirect ownership relationship. The qualification requires also that the ownership relationship between the contributor and the receiver must have continued for the whole fiscal year and that the financial year of the contributor and the receiver ends at the same time.

In value added taxation, tax grouping is available for companies engaged in financial and insurance activities when the companies in question are closely bound to one another by financial, economic and organisational links.

SELL-SIDE

18. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY?

Under the participation exemption regime, capital gains derived by companies from the transfer of shares are not considered taxable income, and consequently acquisition costs of shares are not tax-deductible if the following conditions are met:

- The transferor of the shares is a limited liability company, a co-operative, a savings bank or a mutual insurance company taxed in accordance with the Business Income Tax Act;
- The transferor is not engaged in venture capital or private equity activities;
- The shares belong to the transferor's fixed assets;
- The transferor has owned at least 10% of the share capital of the target company without interruption for at least one year during a period that has ended no more than one year prior to the transfer;
- The target company is not a residential housing company, a real estate company or a limited company the activities of which de facto mainly consist of real estate holding or managing;
- The target company is:
    - A Finnish resident company;
    - A company referred to in Article 2 of the EU Parent-Subsidiary Directive;
    - A company resident in a country with which Finland has a tax treaty, which is applied to dividends distributed by that company.

If participation exemption is not applicable, capital gains are subject to corporate income tax at the rate 20%.

Capital losses accruing from the transfer of shares belonging to fixed assets, but not covered by the exemption, are deductible from taxable capital gains derived from transfers of fixed asset shares in the same tax year and the subsequent five tax years. This limitation is not applied to the transfer of shares in residential housing companies, real estate companies and real estate holding or management companies. If the company transferred is not resident in a tax treaty state, the capital loss is not deductible in the transferor's taxation.

19. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES ARE REINVESTED?

There is no specific tax advantage provided for reinvesting the sale proceeds.

20. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?

There are no substance requirements for holding/finance companies tax resident in Finland. A company is Finnish resident on the basis of being established in Finland.

21. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?

Under Finnish merger provisions mergers are tax neutral provided that in a merger one or more Finnish corporate entities or partnerships are dissolved without liquidation and all of the assets and liabilities of the dissolved company are transferred to another Finnish corporate entity or partnership. Shareholders of the merging company must receive the surviving company's shares in proportion to their shareholding and cash consideration may not exceed 10 per cent of the share capital. The merger provisions apply to EU/EEA companies covered by the merger directive and under Finnish case law in some cases also to non-EU/EEA companies residing in tax treaty states. Qualifying mergers do not cause any direct tax consequences to the companies or their shareholders and they are exempted from Finnish transfer tax and VAT.

Finland does not have any special provisions concerning spin-offs. However, provisions concerning tax neutral divisions may apply. A qualifying division does not cause any direct income tax consequences, VAT and transfer tax consequences to the involved companies or their shareholders. Under certain conditions, the division provisions apply also to partial divisions. In a qualifying partial division, the transferred assets must form an independent business unit and at least one independent business unit must be left in the transferring company.

MANAGEMENT INCENTIVES

22. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES?

In Finland, incentives related to employment are treated as earned income. Incentives for managing directors and members of the board are considered as earned income even though they are not in an employment relationship with the company and this cannot be avoided by providing the respective services through a company.

The tax treatment of share based incentive schemes depends essentially on the nature and structure of the scheme. Employee stock options and other similar instruments through which management are entitled to subscribe an employer's or its group company's shares in preferential terms are subject to taxation as earned income. The applicability of employee's or employer's contributions' depends on the nature of the instruments. For example qualifying synthetic options are not subject to social insurance contributions. The exercise of the options realises taxation, which in practice means that the difference between the price paid by the employee and the fair value at the moment of exercise is taxed as earned income of the exercise year.

Profit arising from the schemes in which management invests directly into the company at arm's length conditions and bear real risk to lose their investment should be treated as capital income. To ensure the treatment as capital income, the arm's length nature of the scheme should be prudently verified and investments should not be financed by the employer. In 2014, the Finnish Supreme Administrative Court issued a ruling concerning so called management's holding company structures. In the ruling, a structure where a holding company owned directly or indirectly by employees had acquired the employer's shares and the employer had partly financed the acquisition was considered to be set up with purpose to avoid taxes and therefore income arisen in such structure was classified as earned income.

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