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 recent developments in Finland relate closely to the implementation of the Anti-Tax Avoidance Directive (ATAD) and planned reform of the corporate tax system as well as case law giving insight in interest deduction limitation and the application of the general anti-avoidance rule. During recent years, the Finnish Tax Administration has been aggressive in challenging existing structures and arrangements, which places taxpayers in a position to evaluate and document their actions prudently.

Current Finnish interest deduction limitations have been in force since 2014. Among other criteria, the applicability of limitations has been exempt, if the taxpayer could demonstrate that its equity over total assets is equal or higher than the equivalent group ratio based on the ultimate parent's statutory consolidated accounts. In recent case law, the statutory consolidated accounts of a group company owned by private equity funds has not been accepted as qualifying statutory consolidated accounts of the ultimate parent company, on which the equivalent group equity ratio could be based. The underlying reason was that the group company was considered as a sub-group parent company, which statutory consolidated accounts cannot be accepted as a basis for the group equity ratio.

The Finnish Ministry of Finance has published a draft government bill in order to implement ATAD's obligations on interest deduction limitation. However, in order to implement ATAD's obligations on interest deduction limitation, the Finnish Ministry of Finance has published a draft government bill. Although the general approach of the suggested implementation would be in line with the minimum standards set forth in ATAD, the suggested implementation would restrict in force even further intra-group debt financing. Moreover, the proposed measures would cover third party loans and the equity ratio based test could be abolished.

The Finnish peculiarity, division of corporates' income sources, would be abolished by extending the applicability of the Finnish Business Income Tax Act (BITA) generally to all corporations. As the Finnish Ministry of Finance has proposed in its draft government bill, a corporate entity's tax deductibles could be offset against all taxable income within one single source of income. Moreover, prior net operating losses would be simplified and intra-group loss relief would be available for all companies taxed in accordance with the BITA. For Finnish REC's and holding companies, intra-group loss relief through group contribution would be available, which has not usually been the case. Other entities, such as foundations and partnerships, could still have separate sources of income, although real estate activities could be classified as business activities under the proposed tax system.

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 the Supreme Administrative Court in its case law has held in force an Administrative Court ruling in favour of taxpayers stating that carried interest was treated as capital income instead of earned income. Moreover, recent case law has reduced the attractiveness of payment-in-kind ("PIK") loans provided by private individuals. In private equity deals, preference shares have replaced partnership loans.

From the VAT perspective, a recent precedent from the Finnish Supreme Administrative Court confirmed that the seller may deduct VAT incurred on the sale of shares when the sale is done in connection to closing down a part of the business. The implications of this ruling are still somewhat unclear. Previously the Tax Authority has had an extremely restrictive approach to VAT deduction rights on costs relating to sale of shares or real estate.

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. There are already enacted interest deductibility limitations and CFC regulation. Country-by-country reporting rules have been applicable to accounting periods ending in 2017 onwards.

Finland signed the multilateral instrument in June 2017 opting only for the minimum standards and making reservations to other articles. However, the required national parliamentary approval of the adoption is still pending. When in effect, this means that existing provisions, concerning for example permanent establishments, will remain unchanged in covered tax treaties. Tax treaties not covered by the multilateral instrument are the Nordic Income Tax Treaty and the Bulgarian Income Tax Treaty.

With respect to BEPS action 6, there is no expressed intention to take action other than to implement related minimum standards in the multilateral instrument. By adopting the Principal Purpose Test it is intended that Finland would fulfil the minimum standard of Article 7. Finland does not adopt the additional provision granting the competent authority the right to grant the treaty benefits even though the Principal Purpose Test provision applies.

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

- **Article 6 – Purpose of a Covered Tax Agreement:** Finland would amend the preamble 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 amend the preamble indicating 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.

The implemented rules based on the amendment of the Parent-Subsidiary Directive have been in effect since the beginning of 2016. The implemented rules cover a Limitation-on-Benefits (LOB) rule and a General Anti-Abuse Rule (GAAR).

In respect to interest deduction limitations, the Finnish Ministry of Finance has published a draft government bill implementing ATAD's obligations. Generally, the proposed implementation measures would impact interest deductions of associated taxpayers. In Finland the amended interest deduction limitation regime would become more stringent to its current state if the current version of the draft government bill is accepted. In accordance with the current proposal:

- Net interest costs to group companies and associated companies could be deducted up to €500,000 (the same as currently)
- Net interest costs to third party lenders could be deducted up to €3,000,000

- Net interest costs up to 25% of the taxpayer's earnings before interest, tax and depreciation (EBITD) would be tax deductible (the same as currently)
- Current equity ratio-based exemption could be abolished.
- The concept of interest would extend to e.g. financial leasing, derivative instruments, guarantee fees and bank arrangements fees.

The limitations will not apply to standalone companies. The draft government bill could still be subject to substantial changes before becoming a final government bill and enacted law.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES BETWEEN AN ACQUISITION OF SHARES AND AN ASSET DEAL IN YOUR COUNTRY?

A) Share deal

Tax disadvantages: A share deal bears on two significant tax disadvantages. Firstly, the transfer tax of either 1.6% or 2.0% of the acquisition price is levied on the transfer of all but publicly traded shares in Finnish companies. If the value of the company is based on aspects other than the securities or real estate it owns, then the basis for transfer taxation can be significantly higher in comparison to an asset deal. The buyer is generally responsible for the payment of the transfer tax.

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 and therefore the VAT cannot be deducted as overhead costs. However, according to a recent Finnish Supreme Administrative Court (SAC) ruling, a seller of shares was able to deduct the VAT on costs relating to a sale of shares as overhead costs when the sale was made in connection to closing down a part of the business. We expect that there will be more SAC rulings which will provide further clarity on circumstances where the VAT deduction can be made.

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 fulfils 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. However, according to a new ruling, a seller may deduct VAT on costs incurred on a sale of shares in certain circumstances. Therefore, depending on the circumstances, a seller might be able to deduct costs on a sale of shares as well.

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 legal provisions are in place to step up the value of the target company's underlying assets upon the acquisition of its shares. The acquisition cost of the shares is deductible from sales proceeds of the shares unless a participation exemption applies.

5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL AND SIMILAR INTANGIBLE ASSETS IN YOUR COUNTRY?

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 intangible assets that may not separately be disposed. The treatment of goodwill differs between an asset deal and a share deal.

In an asset deal, the purchase price for goodwill may be depreciated during its probable economic impact period (maximum ten tax years). The depreciated amount is equal for each tax year during its economic impact period. In a share deal, goodwill may not be amortised or depreciated for tax purposes, but the acquisition cost of shares is deductible in a subsequent transfer thereof unless the participation exemption applies.

6. WHAT ARE THE LIMITATIONS ON THE DEDUCTIBILITY OF INTEREST EXPENSE? ARE THERE SPECIAL INTEREST LIMITATIONS 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. Current limitations concerning the tax deductibility of interest payments have been applicable to corporations, partnerships, corresponding foreign entities and their permanent establishments as of the tax year 2014. The limitations are applied only if the interest expenses exceed the interest income received by the company.

A general safe haven of €500,000 is applied; if net interest expenses (including third party and related party interests) exceed €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 EBITD (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. Furthermore, 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.

In recent case law, the statutory consolidated accounts of a group company owned by private equity funds has not been accepted as qualifying statutory consolidated accounts of the ultimate parent company, on which the equivalent group equity ratio could be based. The underlying reason was that the group company was considered as a sub-group parent company, which statutory consolidated accounts cannot be accepted as a basis for the group equity ratio.

The regulation allows an indefinite carry forward of interest expenses that cannot be deducted based on the aforementioned restrictions.

Due to the national implementation of ATAD, the rules on interest deduction limitations will be subject to significant changes. Among other things, third party loans would be covered by the limitations. Moreover, as it is proposed in the draft government bill, the equity ratio test could be abolished. Interest deduction limitations would not cover standalone companies.

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

For most acquisitions the preferred strategy to push down debt is the use of a Finnish Special Purpose Vehicle (SPV), if a foreign buyer acquires a Finnish target company. The SPV is financed by loans from third parties or foreign group companies, often located in a jurisdiction with a low corporate income tax rate. As interest deductibility is and will be subject to limitations, 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. As an alternative, the target may be merged with the SPV or liquidated, for example in order 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 that is tax resident in an EU Member State or in a state with which Finland has concluded a tax treaty containing an article of non-discrimination.

All these strategies have to be carefully analysed in order to avoid the application of Finnish anti-abuse pro-visions, as well as to comply with transfer pricing rules. The recent case law denying deductibility of interest expenses risen 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?

No special provision that would give tax incentives for equity funding is applicable.

9. ARE LOSSES OF A TARGET COMPANY AVAILABLE AFTER AN ACQUISITION IS MADE? ARE THERE ANY RESTRICTIONS ON THE USE OF SUCH LOSSES?

Net operating losses incurred may be carried forward for the subsequent 10 tax years. However, the right to carry forward tax losses could be forfeited in certain cases.

The right to carry forward losses is forfeited, if more than 50% of shares in a company have been transferred during the loss year or thereafter. 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 under certain conditions grant a special permission to offset losses.

However, 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.

In case of a merger or demerger the transfer of losses is conditional, 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 is three years in respect of tax years ending during 2017. Tax years that have ended in 2016 at the latest are covered by a five-year 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 six years. In certain criminal tax fraud cases, the statute of limitation could be extended up to 11 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.

Transfer pricing issues in relation to intra-group financing transactions in the target company 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 (by the buyer).

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

Costs arising directly from facilitating the acquisition, such as fees from legal and other professional services and transfer tax, are included in acquisition costs of shares. As such, the buyer may not depreciate the acquisition cost of the shares. Acquisition cost of shares is deductible against sales proceeds of the shares unless the participation exemption is not applicable.

However, in recent case law the Supreme Administrative court ruled that fees from professional services in relation to reorganisation could be deducted as yearly expenses under certain conditions. According to the ruling, the fees shall not be included in the acquisition cost of the shares, if the professional services related to strategic business planning and the reorganisation of the group structure. Relevant grounds were that no new business assets were acquired and that the reorganisation was executed in accordance with Cross-Border Merger Directive and national legal provisions.

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 costs of the acquired shares are not subject to depreciations.

Due to the aforementioned divergent treatment, drawing the line between yearly expenses and acquisition costs 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 OF A DOMESTIC COMPANY BY A FOREIGN COMPANY?

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 sources 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 partner-ships, 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 MANNER THROUGH MERGERS OR A TAX GROUPING?

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 fulfilment of certain conditions, for example in mergers, divisions and exchanges of shares, there are restrictions on the amount of cash contributions.

16. ARE THERE ANY PARTICULAR ISSUES TO CONSIDER IN THE CASE OF A TARGET COMPANY THAT HAS SIGNIFICANT REAL ESTATE ASSETS?

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 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.

Currently residential housing companies, MRECs, RECs and other real estate companies are not subject to interest deduction limitations. However, due to the suggested national implementation of ATAD, all companies would be subject to interest deduction limitation unless the company is a standalone company.

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 because 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?

Corporations are taxed separately under Finnish tax regime. However, the Finnish group contribution regime allows under certain conditions Finnish group companies and Finnish permanent establishments to offset their profits and losses. In practice, eligible contribution is deducted from taxable income of the contributing company, whereas the contribution is considered as taxable income of the receiving company.

Group contribution regime is available only if certain conditions are met, such as both the contributing and receiving companies are Finnish tax residents and that they carry on business activities. Additionally, there must be a sufficient direct or indirect group ownership between the participating companies. Moreover, it is required that the group relationship between participating companies has lasted for the entire tax year and that the participating companies' financial years ends at the same time.

If the proposed draft government bill on corporate tax reform would enter into force as such, group contribution would be available to all companies, which taxable income is calculated according to BITA. In practice, this would mean that holding companies and REC's would be eligible for group contribution irrespectively, if they carry on business activities.

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.

18. DOES YOUR COUNTRY HAVE ANY SPECIAL TAX STATUS SUCH AS A PATENT BOX FOR COMPANIES THAT HOLD IN-TANGIBLE ASSETS?

There is no special tax status for companies holding intangible assets.

19. DOES YOUR COUNTRY IMPOSE ADVERSE TAX CONSEQUENCES IF OWNERSHIP OF INTANGIBLES IS TRANSFERRED OUT OF THE COUNTRY?

No adverse tax consequences specifically relating to transfer of intangible assets are imposed.

SELL-SIDE

20. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY? WHAT, IF ANY, GAINS ARISING IN AN M&A CONTEXT ARE ELIGIBLE FOR SPECIAL TREATMENT?

Under the participation exemption regime, capital gains derived by companies from the transfer of shares are not considered as 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.

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

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

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

No substance requirements are in place for holding or finance companies tax resident in Finland. A company is resident in Finland based on being incorporated in Finland.

23. 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 dis-solved company are transferred to another Finnish corporate entity or partnership. The surviving company has to give its shares to the shareholders of the merging company and cash contribution may not exceed 10% of the share capital. The merger provisions apply to EU/EEA companies covered by the merger directive. Moreover, according To Finnish Case Law, the merger provisions also apply in some cases 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 exempt 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

24. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES IN CONNECTION WITH SELLING OR BUYING A COMPANY?

Employment based incentives benefits are treated as earned income in Finland. Benefits arising from incentives for managing directors and members of the board are also considered as earned income even though there is no employment relationship between them and the company. According to Finnish case law, the aforementioned tax treatment cannot be avoided by providing the respective management 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. There could also be obligations to pay social insurance contributions depending on the nature of the scheme. For example, qualifying synthetic options are not subject to social insurance contributions. By exercising the option, the benefit is realised in 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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