

16.1.2015

Corporate Income Tax

FINLAND

A Oyj's Malaysian subsidiary was not considered as controlled foreign corporation

In its decision 2014:198, the Supreme Administrative Court stated that the business activities of A Oyj's Malaysian subsidiary are considered to be 'other production activities' comparable to industrial production activities. Thus, the subsidiary is not regarded as a controlled foreign corporation for tax purposes.

Provision of tax exempt transfer of assets was applicable to a municipality

The Supreme Administrative Court considered that the provision of the tax exempt transfer of assets was applicable to a municipality transferring their harbour business to a limited company held by that municipality.

Dividends received by a US investment management company were not subject to withholding tax

Supreme Administrative Court, decision 2015:9

A is a US Delaware Statutory Trust –type, registered investment management company. In addition, A is a regulated investment company and closed-end investment fund. As a legal person, A can carry out business activities in its own name and its management has been externalized to a separate company. A's ordinary shares are listed in the New York Stock Exchange. In US's taxation it is regarded as a corporate body.

According to the decision by the Supreme Administrative Court, A is comparable to a Finnish public limited liability company, although it shares certain similarities with Finnish investment funds. As dividends distributed by a Finnish public limited liability company to another Finnish public limited liability company are tax exempt, and furthermore, when taking into account the Article 63 of the Treaty on the Functioning of the European Union regarding the free movement of capital and the relevant case law, the dividends received by A from a Finnish public limited liability company were not subject to withholding taxation in Finland.

Company's equity could not be adjusted with depreciation difference for equity ratio test purposes

Supreme Administrative Court, decision 2015:11

A Oy had prepared its statutory financial statements according to Finnish Accounting Act and Finnish Accounting Standards (FAS), in which it had recorded the accumulated depreciation difference as a separate entry pursuant to the Accounting Board's general guidelines. The group, a part of which was A Oy, had prepared consolidated financial statements according to international financial reporting standards (IFRS) and consequently included the depreciation difference less deferred tax liability in equity.





Pursuant to Section 18 a (3) of the Business Income Tax Act, when conducting the equity ratio test regarding the applicability of interest deduction limitation rules, the approved financial statements of the separate entity and the approved consolidated financial statements shall be utilized for comparing the ratios of equity and balance sheet total. The Supreme Administrative Court stated that the depreciation difference less deferred taxes in A Oy's financial statements cannot be considered as equity for equity ratio test purposes.

Corporate tax law changes 2015

The following corporate tax law changes are in effect as of 1st of January 2015.

Entertainment expenses are 50 % tax deductible

Entertainment expenses are 50 percent tax-deductible when calculating taxable business income. The new legislation is applied as of fiscal year 2015. In 2014, entertainment expenses were fully non-deductible.

The Windfall Tax Act annulled

The Windfall Tax Act and the related tax law changes are annulled. The Act was adopted in late 2013 but it never came into force.

Distribution of co-operation's surplus

As of 1st of January 2015, 25 % of co-operation capital's interest, or co-operation's received surplus, is considered as taxable income from capital or company income until 5,000.00 euros. In addition, income exceeding 5,000 euros is 85 % taxable income from capital and 75 % taxable business income. The interest paid by co-operation may in some cases be also considered as earned income.

The Act on double amortizations for productive investments continues

The temporary act on double amortizations for productive investments that was applied in 2013 and 2014 is also to be applied in the following tax assessments in 2015 and 2016. Double amortizations can be conducted, in comparison with the regulatory amortizations, from the residues of initial outlays of new factories and workshops alike the new machinery used in the aforementioned. The amortizations can be made in the first two fiscal years and the increase concerns also commodities acquired in 2015 and 2016.

Tax law changes in relation to Financial Sector Crises Solution legislation

As of 2015, deposit banks and other credit companies pay the fee for determining an official weight of measure instead of the now-annulled bank tax. The fees paid are transferred to the financial stability fund, which consists of financial crises solution fund and deposit guarantee fund. The fees are tax-deductible when calculating the business income.



EU

EU Commission views Swedish interest deduction limitation regulation as contrary to EU law

The EU Commission sent a letter of formal notice to the Swedish government stating that they are of the view that the Swedish interest deduction limitation regulation is not in accordance with the principle of freedom of establishment. The Commission views that the regulation in practice is applicable only in cross border situations and not in purely domestic situations. The rules do not fulfill the EU law requirement of legal certainty because of their complexity, either.

The Swedish government is expected to submit a response to the letter of formal notice within two months. Should the Commission not be satisfied with the Swedish response, they will prepare a formal opinion requesting Sweden to change the legislation.

DENMARK

Launch of public web service containing entities' tax information

Denmark's Ministry of Taxation has launched a public web service with available tax information relating to companies, associations and foundations in Denmark. In the service, there is information among others on taxable income, paid corporate tax and utilization of tax losses. Currently, the information is available for fiscal years 2012 and 2013. Information regarding 2014 will be published at the end of 2015. With this, Denmark seeks to increase the transparency of taxation and prevent tax evasion.

ESTONIA

Estonian companies are required to declare all paid-in capital injections in early 2015

Estonian companies are required to declare to the tax authorities all paid-in capital to the company's equity from its incorporation to the end of 2014. Besides monetary contributions to the company's share capital, among others share premium payments and the amounts received from the disposal of company's own shares are deemed as paid-in capital for declaration purposes. The declaration aims to clarify the extent of paid-in capital, as Estonian companies can carry out tax neutral capital repayments to their shareholders to the amount the paid-in capital is not exceeded.

Certain tax incentives regarding distribution of dividends have expired in the end of 2014

It is not possible to deduct corporate income tax paid on profits received between years 1994 and 1999 from distributable dividends. Further, dividends received prior to 1 January 2005 cannot be re-distributed in a tax neutral manner.



RUSSIA

Withholding tax of foreign dividends will increase to 13 %

Based on the amendment to the Tax Code signed by the President on 24 November 2014, withholding tax rate of foreign dividends received by Russian residents will increase from 9% to 13 % after the amendment is published officially.

Definition of dividend is based on the definition of the source state

The Russian Ministry of Finance (“MoF”) has published a letter (03-04-05/40978) on 15 August 2014 regarding the tax treatment of payments made to a Russian shareholder resulting from the reduction of share capital in a UK resident company. If such payments are treated as dividends according to the UK legislation, the payments fall under the Article 10 (dividend) of the Russia-UK tax treaty. Therefore, according to the letter, the term “dividend” should be defined based on the legislation of the source state.

CHINA

New General Anti Avoidance Rule (GAAR)

The Chinese State Administration of Taxation released new GAAR (SAT Order No. 32) which contains 22 articles and confers the tax authority the right to make special tax adjustments to arrangements entered into in order to receive tax benefits, if such arrangements lack reasonable commercial purpose. The new rules are applied to cross-border transactions. However, specific anti avoidance rules have preference over the new GAAR. The new GAAR is applicable as from 1 February 2015.

UNITED STATES

List of boycott countries reissued

The United States Treasury Department has on 9 December 2014 reissued the list of countries that require cooperation with, or participation in, an international boycott as a condition for doing business. The countries listed are Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen. The new list remain unchanged compared to the list dated 20 August 2014.

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Transfer Pricing

OECD's BEPS project released six more discussion draft

As part of the BEPS (Base Erosion and Profit Shifting) project OECD released the six discussion drafts in the end of last year (17 – 19 December, 2014). The discussion draft covers the following aspects:

- Guidelines on place of taxation for business-to-consumer supplies of services and intangibles (Action 1);
- Interest deductions and other financial payments (Action 4);
- Discussion draft on revisions to chapter I of the transfer pricing guidelines including risk, recharacterisation, and special measures (Action 8-10);
- Discussion draft on transfer pricing aspects of cross-border commodity transactions (Action 10);
- Discussion draft on the use of profit splits in the context of global value chains (Action 10); and
- Make dispute resolution mechanisms more effective (Action 14).

The discussion drafts provide recommendations while in other cases they set out options for general comment before they are finalized.

The aim of the transfer pricing related discussion draft is to assure that transfer pricing outcomes are in line with value creation. The short descriptions of the content of the transfer pricing discussion drafts are presented below.

Risk, recharacterisation and special measures

Proposed revision to Chapter I of the Transfer Pricing Guidelines emphasize the importance of identifying the actual transactions.

In the identification of the transactions, the actual conduct of the parties should be described, in addition to the contractual terms. The draft states that the risks must be identified and evaluated with respect to the wider value chain of the MNE group rather than just parties to the transaction. The discussion draft makes it clear that the OECD views it as permissible for tax authorities to supplement or supplant what is in a written contract to reflect the functions performed and the risks actually assumed by the parties. In addition, the draft emphasized the importance of identifying the party that control risk.

There is a section in the draft concerning non-recognition which discusses the circumstances under which transactions can be recharacterised. Potential special measures are also discussed with regard to intangible assets, risk and over-capitalization in the draft.

Commodity transactions

In the discussion draft concerning commodity transactions amendments to the Chapter II of the OECD Guidelines are proposed related to the use of comparable uncontrolled price method, quoted or publicly available prices, determination of the pricing date and comparability adjustments. The proposals aim to create greater consistency in the way tax administrations and taxpayers determine the pricing of commodities under the arm's length principle and to ensure that pricing reflects value creation.



The use of profit splits

It is mentioned in the discussion draft concerning the use of profit split method that first step in the transfer pricing analysis is to accurately delineate the transaction which in turn relies heavily on an analysis of the functions performed by the parties taking into account the assets used and risks assumed. Importantly, a thorough functional analysis should be prepared taking into account the broader context of the MNE group's business operations. The discussion draft contains scenarios to illustrate the cases in which transactions profit split methods may be appropriate. These scenarios relate to the following:

- Value chains
- Unique and valuable contributions
- Integration and sharing of risks
- Fragmentation of functions
- Lack of comparables
- Hard-to-value intangibles
- Ex ante/ex post results
- Allocation of losses

More information on the topic:

[Discussion drafts released in six BEPS-related areas raise more concerns for MNEs](#)

[International VAT/GST guidelines](#)

[Guidelines on place of taxation for business-to-consumer supplies of services and intangibles](#)

[Provisions on supporting the guidelines in practice](#)

[BEPS action 4: Interest deductions and other financial payments](#)

[BEPS actions 8, 9 and 10: Discussion draft on revisions to chapter I of the transfer pricing guidelines \(including risk, recharacterisation, and special measures\)](#)

[BEPS action 10: Discussion draft on the transfer pricing aspects of cross-border commodity transactions](#)

[BEPS action 10: Discussion draft on the use of profit splits in the context of global value chains](#)

[BEPS action 14: Make dispute resolution mechanisms more effective](#)

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Corporate Law

Merging a limited liability company to an entity of another legal form

The merger is typically used to integrate activities of different entities as well as simplifying the group structures. When a company is merged to another company, its assets and liabilities are transferred to an acquiring company and a merging company will be dissolved. Merger is a bundle of various legal effects and requires an applicable statutory provision. The Finnish Companies Act stipulates only mergers between limited liability companies. Even more specific statutory basis is required to merge entities of different legal forms. Legal provisions enabling a limited liability company to merge to an entity of a different legal form may be found e.g. Acts for Housing companies, Cooperatives, Commercial banks and other credit institutions, Savings banks as well as mutual and non-mutual Insurance companies.

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