

17.10.2014

Corporate Income Tax

FINLAND

The Government proposal to replace bank tax by a fee for determining an official weight of measure

Government Proposes (HE 175/2014) for Financial Sector Crises Solution and (HE 176/2014) for Revision of the Income and Business Tax Act. According to the proposal, in the future deposit banks and other credit companies would pay the fee for determining an official weight of measure instead of the bank tax. The fee paid would be transferred either to the EU's common crisis prevention fund or the national crisis prevention fund. The fee would be tax-deductible when calculating the business income. The legislation is meant to become effective on 1 January 2015 and the amendments of the Income and Business Tax Act are meant to be applied for the first time in 2015 taxation.

Government Proposal (HE 158/2014) for Revision of the Real Estate Tax Act

The Proposal proposes an increase of 0.20 percentage unit on the range of mutual real estate tax rates, which would set the new rates at 0.80–1.55 percentage. The real estate tax rate's range for permanent residential building increases 0.05 percentage unit, setting the new limits at 0.37–0.80 percentage. Other than permanent residential buildings' maximum tax rate would be examined due to the increase. The law is meant to become effective as soon as possible and it is meant to be applied for the first time in 2015 when assessing real estate tax.

Decision 6 October 2014 of the Supreme Administrative Court, 2014:147

The Supreme Administrative Court of Finland (SAC) rendered a decision related to foreign tax credit in taxation of Finnish limited company A Oy in Finland payable by its permanent establishment (PE) located in Estonia. The PE had paid income tax in Estonia based on entertainment expenses, donations and fringe benefits. The income of the PE was part of taxable income of A Oy in Finland. The SAC ruled that A Oy had the right to tax credit on tax paid in Estonia pursuant to the provisions in the income tax treaty between Finland and Estonia. The deduction cannot however exceed the amount of tax payable in Finland on the income received from Estonia.

Decision 10 October 2014 of the Supreme Administrative Court, 2014:149

A Finnish housing company had planned to commence a construction project incurring a planning cost of some EUR 200 000. The cost was amortised in the company's balance sheet in years 1991 and 1992. However, the construction work was never started and the construction permit expired in 1999. In 2005, the company applied for a change in city planning in order to build a larger apartment building. At the same time, the company recorded the amortised planning costs as expenses in the accounts and declared the said expenses as deductible expenses in its tax return for 2005. The SAC overruled the decision given by the Administrative Court and deemed the planning costs as deductible expenses for the fiscal year 2005.

Decision 15 October 2014 of the Supreme Administrative Court, 2014:151

The SAC has given a decision regarding the applicability of share-for-share exchange rules in a case where spouses A and B had simultaneously transferred their shares in a real-estate company C Oy to D Oyj. A had owned 80 % and B 20 % of the C Oy's shares.

A received 5 000 800 euros in shares and 39 397.03 euros in cash of the total sale price of 6 300 371.33 euros. B received the remaining 1 260 074.29 euros in cash. According to the decision, the transaction was deemed as a single transaction. Therefore, the share-for-share exchange rules according to Section 52 f of the Business Income Tax Act and Section 45 (2) of the Income Tax Act are not applicable as the total amount of cash payment exceeded 10 % of the nominal value of the shares received.

Advance ruling 40/2014 by Central Tax Board, 17th of September 2014

Limited company A Oy held real estate that it utilized in its business activities. In addition, A Oy held half of shares in a mutual real estate company which owned real estate located outside Finland and used by A Oy's foreign subsidiary. A Oy planned to transfer the real estate and half of the shares in the mutual real estate company to a new mutual real estate company by conducting a partial demerger. The established mutual real estate company would then lease back the real estate currently held by A Oy.

As the established mutual real estate company would not conduct any active business activities and the transferred assets would not constitute a branch of activity, the assets were not deemed to constitute a stand-alone business as described in Section 52 c (2) of the Business Income Tax Act. Therefore, the provisions regarding partial demerger in the aforementioned Section were not applied to the arrangement.

The ruling is not legally valid.

Tax Administration Guideline A110/200/2014

The Tax Administration has published a guideline regarding comparison data audits in credit institutions. A comparison data audit is a form of tax audit, the purpose of which is to gather data only from third parties. The key content of the guideline is the referred decision by the Administrative Court of Helsinki 14/0570/6 (25 June 2014), according to which a bank can be subjected to a comparison data audit that aims specifically for the gathering e.g. the data of its customers. However, the decision is not legally valid.

Tax Administration's tax debt register will be in use on 1 December 2014

Information on tax debts of companies and entrepreneurs will be available for everyone since December 2014. There is no information regarding individuals in the register. The register contains information whether the company or entrepreneur has an outstanding tax debt at least amounting to 10 000 EUR or defaults of filing of Periodic Tax Returns. The service works via Tax administration's Business Information online service.



EU

The European Commission is investigating Luxembourg's tax authorities' tax decision on transfer pricing arrangement

The European Commission announced on 7 October 2014, that it had opened an in-depth investigation related to the decision by Luxembourg's tax authorities regarding the transfer pricing arrangements on corporate income tax to be paid by Amazon in Luxembourg. The investigation examines whether the decision complies with the EU rules on state aid based on Article 107 (1) of the Treaty of the Functioning of the European Union (TFEU).

The concerned decision applies to Amazon's subsidiary Amazon EU Sàrl, based in Luxembourg and records most of Amazon's European royalty profits. The Commission considers at this point that the amount of this royalty, which lowers the taxable profits of Amazon EU Sàrl yearly, might not be in line with market conditions, and could thus be considered as state aid forbidden in Article 107 of TFEU.

SWITZERLAND

Switzerland starts negotiations on automatic exchange of information

The Federal Council of Switzerland gave its definite negotiation mandate acceptance for the introduction of automatic exchange of information in tax matters. Switzerland will commence the negotiations with the European Union, certain partner countries as well as with the United States regarding FATCA. Negotiations should start shortly.

Additionally, Switzerland reaffirmed that it will introduce the required amendments in legislation so that Swiss financial institutions could start the data collection regarding foreign taxpayers in 2017. The automatic exchange of information could take place in 2018 in case the legislative amendments and agreements will be accepted in due time.

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Transfer Pricing

New transfer pricing documentation form released in France

The French Tax Authorities released in September 2014 a form to be used by the French entities. The requirement is in line with a trend to demand more transparency from taxpayers. The French entities obliged to file the form are entities with turnover or gross assets on the balance sheet exceeding EUR 400 million, or with a more than 50 % direct or indirect shareholder or subsidiary meeting this threshold. The form must be submitted no later than six months after the deadline to file the annual corporate income tax return.



The following information has to be provided in the form:

- A general description of the Group activity
- The nature and the country of location of the Group intangibles used by the French entity
- A broad description of the Group transfer pricing policies that are related to intercompany transactions involving the French entity
- The aggregated amount of intercompany transactions by nature exceeding EUR 100.000, the countries of origin of the related companies involved in the transaction, and the main transfer pricing method used
- A broad description of the entity's activity and the changes occurred during the tax year in relation to the transfer pricing policy, the nature and the country of location of the assets.

There is no specific penalty for lack of filing. A lack of filing is likely to trigger in practice a tax audit, where the complete documentation is likely to be requested. If the complete documentation is then not produced, a maximum penalty of 5 % of the assessed amount would

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Corporate Law

About incentive schemes for personnel

There are different ways to reward the personnel of a company. Some of the schemes are based on share ownerships and some are cash-based.

Share ownership-based schemes may be more feasible in small companies in order to keep the decision making and number of shareholders controlled. In share ownership-based incentive schemes the personnel may be rewarded with dividends and also the increase of the value of the share may benefit them. In principal, if an employee buys or subscribes the shares for a value less than the fair market value, the difference is earned income to him/her.

In addition to share ownership-based schemes and normal cash bonuses, so called phantom option scheme may be used to reward the personnel. In phantom option scheme the employees may be entitled to a cash bonus if the value of the employer-company's share is higher at the end of the scheme period than in the beginning. In phantom option scheme no wage related social security costs shall be payable where in normal cash bonus system they increase the costs of the incentive scheme from the employer's point of view.

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