Corporate Income Tax

FINLAND

Decision 2014:33 of Supreme Administrative Court, 18.2.2014

A Oy was part of a Norwegian X Group. A Oy sold shares in its subsidiary B Oy to a Norwegian company, which was also part of the same group. Said company sold forward the shares in B Oy to C ASA during the same day and, at the same time subscribed for shares in C ASA, also part of the X Group. In addition to B Oy, some other companies in the X Group had been transferred to C ASA. C ASA was listed in June 2004.

Tax office added approx. 62 MEUR to A Oy's income for fiscal year of 2004 based on the sale of B Oy since the price for the shares in B Oy was not considered to be fair market value. Also a punitive tax increase of EUR 620 000 was imposed.

A Oy had determined the sales price for the shares in B Oy by using discounted cash flow method. The valuation was prepared by a third party expert. According to Supreme Administrative Court's (SAC) decision, the valuation in this specific case did not reliably indicate B Oy's fair market value. SAC did confirm that valuation should primarily be established from comparable transactions, however, such transactions were not hand. SAC did also acknowledge discounted cash flow method as a valid valuation method, but rejected the specific valuation prepared for this case. SAC did accept net assets value as the fair indication for the case and disregarded the lower valuation based on discounted cash flow.

The fact that there was a 20% minority shareholding in C ASA in this case was not enough to demonstrate the arm's length nature of the sales price, nor was below net asset value share price accepted due to the fact that the market value of the quoted C ASA was below net asset value.

Since A Oy had tried to establish the market value and since the matter was open to various interpretations, the punitive tax increase was removed.

Decision 2014:29 of Supreme Administrative Court, 13.2.2014

In the case, a municipality planned to centralize the ownership and administration of its real estates into a new holding company A. As a first step, the intention was to carry out several restructurings such as demergers and transfers of assets. After first step, the municipality would have 5 subsidiaries, which would own and manage real estates, and one mutual real estate company (the municipality owns 90% of the shares). As a second step, all the mentioned subsidiaries would be transferred into a new holding company A.

The municipality applied for a preliminary ruling regarding the possibility for a transfer tax exemption because the planned restructurings, according to their view, would meet the requirements of the tax neutral transfer of assets in accordance with the Business Income Tax Act ("BITA"), which according to Transfer Tax Act enables transfer tax exemption.

According to SAC, tax neutral transfer of assets may also be applicable to municipalities. However, in the case, relevant BITA rules were not applied because the municipality was not liable to pay any income taxes on the activities covered by the SAC ruling. There were no grounds to apply the above mentioned rules on the basis of the Merger Directive either as the directive requires that the company,

to which the directive is applied, is liable to pay corporate income taxes. SAC decided that, in the case, the Business Income Tax Act concerning tax neutral transfer of assets was not applicable, and therefore the relief of transfer tax in accordance with the Transfer Tax Act would not be applied to the planned restructurings.

RUSSIA

Clarification on the determination of income for purposes of controlled transactions

The Russian Ministry of Finance issued a Letter (No. 03-01-18/53941) on 10.12.2013 regarding the rules by which the applicable income for purposes of controlled transactions is determined. According to Russian tax legislation, certain transactions should be considered as controlled transactions if the income from these transactions exceeds certain thresholds mentioned in tax legislation. With respect to the calculation of these thresholds, the Ministry of Finance clarified that the calculations should only take into account amounts concluded in transactions which are made during the period in a given calendar year when the parties conducting these transactions are considered to be related to each other.

Clarification on general requirements for certificates of tax residence

The Russian Ministry of Finance has on 14.1.2014 issued a Letter (No. OA-4-13/232), together with Federal Tax Service, clarifying the necessary requirements for certificates of tax residence. A tax residence certificate is required in order to be able to benefit from tax treaties concluded by Russia with other countries. The Ministry of Finance clarifies that such certificates of tax residence should include the name of the taxpayer, the period for which the tax residency is confirmed, the tax treaty of which application is sought and the signature of the competent authority of the foreign country in question. In general, such certificates should also be apostilled. The Ministry of Finance mentioned that there are some states for which an apostille is not required, such as for the certificates of tax residence issued by the Latvian, Swiss and Luxembourg tax authorities.

RUSSIA/SWEDEN

Ministry of Finance clarifies required investment threshold concerning the right to reduced withholding tax rates on dividends

The Russian Ministry of Finance clarified the tax treatment of dividends distributed by a Russian company to its shareholder resident in Sweden. According to the Letter (No. 03-08-13/55719) published on 18.12.2013, dividends paid by a company resident in Russia to a resident of Sweden may be taxed in Sweden. However, such dividends may also be taxed in Russia, but the tax shall not exceed 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly 100% of the capital of the company paying the dividends and the foreign capital invested exceeds USD 100,000 or the equivalent in Russian rouble. However, the required capital investment threshold can be reached even if the capital investment is paid in instalments and the payments are made during the period of 1 year or more.

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Corporate Law

Loans and collaterals to related parties of the company

A company may under certain circumstances grant a loan or give a collateral for a loan to its related party. There are no specific provisions in the Companies Act concerning above mentioned situations. However, the lack of specific stipulations doesn’t mean that the company could grant such loans or give such collaterals without restrictions. General principles of the Companies Act, especially the purpose of the company to generate profits to the shareholders and the principle of equal treatment shall be taken account in connection with these actions. The company shall be able to show a sound business reason for the loan or collateral given to its related party so that the action could be considered as a lawful distribution of assets.

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