Corporate Income Tax

FINLAND

Decision 14/5020/1 of the Administrative Court of Itä-Suomi, 15.4.2014

A corporation's purpose is to enhance social security and wealth of disabled and elderly persons and to work for improving their institutional care. In principal, the company rents premises to its almost wholly owned A Oy, which carries out business activities in the company's estates by providing rehabilitation services to elderly persons. The company also rents flats and apartments to veterans and other elderly persons.

The Administrative Court of Helsinki decided that based on the scope of research and development work and ancillary operations the corporations can be deemed as a non-profit organization. However, taking into consideration the close business relationships of the company and A Oy, the rental income from A Oy is taxable pursuant to the Business Income Tax Act whereas the rental income from veterans and elderly persons shall be treated in accordance with the provisions of the Income Tax Act. The decision is not legally valid.

Decision 14/5024/1 of the Administrative Court of Itä-Suomi, 16.4.2014

The decision concerned a situation where a Finnish company X Oy was intending to carry out a demerger in accordance with the provisions of the Business Income Tax Act. In the demerger, X Oy would divest a business unit to a newly established stand-alone company A Oy and the control of the premises would be transferred to another newly established stand-alone company B Oy. After the demerger, X Oy would still remain operational.

The Administrative Court of Itä-Suomi overruled the previously given advance ruling by stating that the demerger serves the business purposes of X Oy and was considered to be tax neutral in accordance with the provisions of the BITA.

The decision is not legally valid.

Decision 14/0626/3 of the Administrative Court of Helsinki, 17.4.2014

Regardless of the tax authorities' request, a Finnish company X Oy failed t0 file its tax return on time. However, the Tax Administration did not assess the taxable income by estimation, but it ordered a punitive tax increase of EUR 300. After the tax assessment, the X Oy filed its tax return in which it had reported a decrease in value of shares of EUR 605,355.34. The Assessment Adjustment Board overruled the tax assessment and returned the case to the Tax Administration.

The Tax Administration reassessed the taxes in a way that it did not accept the deduction of EUR 605,355.34 and it imposed a punitive tax increase of EUR 30,000. The punitive tax increase of EUR 30.000 was, however, overruled by The Assessment Adjustment Board. The Administrative Court of Helsinki noted that X Oy negligently filed a materially false income tax return and that the reformatio in peius principle does not restrict the amount of the punitive tax increase when reassessing the taxes. The case was returned to the Assessment Adjustment Board.

The decision is not legally valid.

EU

Financial Transaction Tax progresses

The EU FTT was discussed in the ECOFIN council meeting on 6 May 2014, where it was stated that the effects of the EU FTT will be continued to be examined by national experts. The intention of participating countries is to work on a progressive implementation of the EU FTT, initially focusing on the taxation of shares and some derivatives. The first steps would be implemented at the latest on 1 January 2016.

Last year, the UK argued in its challenge that use of the enhanced cooperation to introduce the EU FTT would have extraterritorial effects on the non-participating countries. The UK also noted that if implemented the non-participating countries would have to bear the costs of collecting the tax. On 30 April 2014, European court of justice (CJEU) rejected the UK's challenge against the EU FTT as premature, since the details of the financial transaction tax had not been finalized. However, the decision leaves open the possibility of future challenges against the EU FTT.

Proposal of amendments to Parent-Subsidiary Directive discussed in ECOFIN

On 30 April 2014, the Presidency of the Council of the European Union proposed amendments to the Parent Subsidiary Directive (2011/96/EU; hereafter: PSD). The proposal follows for the most part the political guidance of the European Commission's original proposal, published on 25 November 2013. The presidency presented some modifications to the wording of the Article 4 and proposed that the anti-abuse/GAAR article will be dealt with under the Italian EU Presidency.

The issue was discussed in ECOFIN on 6 May 2014, where Sweden and Malta raised their concerns related to risk of unintended double taxation of the foreign ownership and to the wording of the Article 4 of the proposal. ECOFIN decided that further technical discussions will be held with the Commission in the coming weeks. Member States are expected to implement the amended Directive by 31 December 2015, if the proposal is approved unanimously by ECOFIN on 20 June 2014.

DENMARK

Danish Assessment Board decision on whether foreign passive investors have permanent establishment in Denmark

The Danish Assessment Board (Skatterådet) gave a decision on 22 October 2013 in case *SKM2013.899.SR* concerning whether passive foreign investors in a Danish limited partnership may be deemed to have a permanent establishment in Denmark. The limited partnership in question had a traditional private equity structure.

Under Danish tax law, a permanent establishment is considered to exist if a foreign enterprise has a fixed place of business in Denmark through which its business is wholly or partly carried on. The Assessment Board considered necessary to take into account the activities of all the parties involved in the limited partnership (i.e. also the Danish management company and general partner) in order to determine whether a permanent establishment was considered to exist. The investors investing in the enterprise were deemed to have a permanent establishment in Denmark for Danish tax purposes.

RUSSIA

Clarification on the beneficial ownership requirement under tax treaties concluded with Russia

The Russian Ministry of Finance issued a letter (No. 03-00-RZ/16236) on 9 April 2014 on the concept of beneficial ownership under tax treaties concluded with Russia. According to the letter, the OECD Model is followed in the interpretation of the tax treaties concluded by Russia. The Ministry of Finance clarified that in order to be considered as a beneficial owner of income, the entity in question should be both legally entitled to the income and also the immediate beneficiary of the income. The Ministry of Finance further stated that benefits mentioned in the tax treaties should not be applicable if they are payable under a transaction or series of transactions carried on in a way that a foreign entity claiming the benefits pays all or almost all of its income to another entity, which would not have been entitled to the received benefits of a tax treaty had the income been paid directly to this entity.

BELGIUM

Circular of the Ministry of Finance on fairness tax

The Belgian Ministry of Finance has published a Circular (Ci.RH.421/630.788 of 3 April 2014) on 8 April 2014 on the fairness tax introduced last year. The Circular comments on the scope of the fairness tax and its method of calculation.

The fairness tax is imposed to large companies and Belgian permanent establishments of foreign companies which have distributed dividends. The determination of the dividends is not limited to traditional dividends but covers e.g. reimbursements of share capital. In case of permanent establishments, the distribution of dividends refers to the portion of dividends distributed by the permanent establishment's head office *pro rata* the positive portion of the permanent establishment's accounting result in comparison to its head office's accounting result.

The fairness tax is levied at a rate of 5,15 % and it is imposed in a separate assessment. The tax is not deductible.

GERMANY

Federal Financial Court expresses its doubts about the constitutionality of the German interest deduction limitation rule

The German Federal Financial Court (*Bundesfinanzhof)* has expressed its doubts regarding the constitutionality of the German interest deduction limited rule in a recently published decision (I B 85/13). The decision itself concerned the appeal of a taxpayer against the decision of a lower court to reject the application for suspension of the execution of the tax assessment. The decision was in the favor of the taxpayer.

The Federal Financial Court expressed its doubts about the constitutionality of the rule in the light of the general principle of equality contained in the German Constitution. The Court noted in its decision that the interest deduction limitation rule deviates from the general rule that business expenses shall be deductible in the tax period during which they have incurred and in which they constituted a burden for the taxpayer. The Court therefore considered the rule not to be compatible with the

objective net principle and doubted whether a deviation from the aforesaid principle in the form of the interest deduction limitation rule can be justified.

For further information, please contact

Eija Kuivisto, eija.kuivisto@fi.pwc.com, tel. +358 (0)20 787 7876

Corporate Law

Recovery of assets

There is specific legislation concerning recovery of assets related to bankruptcy or to restructuring proceedings. In certain cases creditors must repay the assets they have received from a debtor company. The purpose of this legislation is to ensure equal treatment of creditors. Different kinds of agreements or arrangements may be subject to recovery.

For further information, please contact

Sanna Suvanne, sanna.suvanne@fi.pwc.com, tel. +358 (0)20 787 7666
Jari Lappalainen, jari.lappalainen@fi.pwc.com, tel. +358 (0)20 787 7499