

Corporate Income Tax

FINLAND

Decision 14/0365/4 of the Administrative Court of Helsinki, 11.4.2014 on the applicability of CFC legislation

Finnish parent company owned two insurance companies registered in Ireland during fiscal years 2005-2007. The insurance companies had no own premises, staff or machinery and equipment and the daily operations of the companies were outsourced to an Irish external service provider. The companies, however, carried the risks related to the insurance business. The reasons for the outsourcing were that the insurance activities would not have been able to engage a full-time insurance professional and the internal activities would not have been able to attract the best insurance professionals.

According to the Administrative Court, when considering the applicability of the CFC legislation, the substantial fact was that the entire operations of the companies were outsourced. The fact that the Irish service provider did not carry the risks of the insurance business was considered irrelevant. Therefore, the Administrative Court considered that the Articles 43 and 48 of the EC Treaty, concerning the freedom of establishment, and the case law of the ECJ regarding their application (C-196/04, Cadbury Schweppes Plc) did not prevent the application of CFC legislation to the group's Irish insurance companies. The decision is not legally valid.

Decision 14/5019/1 of the Administrative Court of Itä-Suomi, 15 April 2014

The decision concerned a situation where a Finnish company X Oy was intending to carry out a transfer of its core business to a newly established subsidiary Y Oy in a tax neutral transfer of assets as determined in the EC Merger Directive. In the transfer, X Oy would transfer its personnel carrying out the core business excluding the CEO and office chief, who would remain in X Oy.

The Administrative Court of Itä-Suomi overruled the previously given advance ruling by stating that the transfer is tax neutral, regardless of the fact that the personnel in charge of administrative work (the CEO and office chief) would not be transferred. The decision is not legally valid.

Advance ruling 17/2014 by Central Tax Board, 26 March 2014

The limited liability company's legal form was planned to be transformed to a cooperative society in accordance with the Finnish Companies Act in a way that the cooperative society would continue to carry out the business activities of the limited liability company. The transformation however is not tax neutral according to the provisions in the Finnish Income Tax Act and therefore, the limited liability company was considered to be dissolved for tax purposes. Accordingly, the tax losses of the limited liability company were not transferred to the cooperative society. The ruling is not legally valid.





Tax Administration's guideline on the limitations of deductibility of interest expenses

Tax Administration has published new guidelines regarding the limitations of deductibility of interest expenses in business activities on 7 April 2014. The limitations are applied for the first time to accounting periods ending in 2014.

RUSSIA

Clarification on submission of tax residence certificate

The Russian Ministry of Finance has issued a Letter (No. 03-08-05/10344) on 11 March 2014 clarifying the requirements set for foreign companies regarding submission of a tax residence certificate in order for the applicable tax treaty to apply to income from Russia.

The Ministry of Finance clarified that the tax residence certificate must be submitted before the date of payment of income in order for the applicable tax treaty to apply. If a company changes its place of tax residence after the submission of the certificate, the Russian tax agent in question will be liable for the calculation and withholding of corporate income tax due in Russia on any subsequent payments made to the company in question.

Changes to the Tax Code

According to a new Federal Law (Federal Law No. 306-FZ) adopted on 2 April 2014, taxpayers, either legal entities or individual entrepreneurs, are no longer obliged to notify the Russian tax authorities about the opening of new bank accounts or the closure of old ones. The requirement to notify the Russian tax authorities has been transferred to banks.

Taxpayers applying either simplified or presumptive tax regimes should be subject to property tax with respect to the immovable property whose tax base is determined considering the property's cadastral value. The amendment relating to the simplified tax regime will enter into force on 1 January 2015.

For further information, please contact

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

Corporate Law

Questions and answers regarding capital loan

In this article we briefly elaborate few practical questions and answers regarding capital loans stipulated in the Finnish Companies Act ("FCA") chapter 12. These questions have come up in our work as Corporate Law experts, usually asked by our auditors.

1. Question: Is it possible to leave the capital loan as a debt from the creditor to the debtor or should it be paid?

Answer: The funds should be in the use of the debtor before the capital loan may be recorded as a capital loan to the balance sheet. Therefore, the loan may not be left as a debt.

2. Question: Is it possible to take into account the profit of the current financial period when calculating the payment conditions of a capital loan and interest.



Answer: No. The profit of the current financial period can not be accurately calculated at the time of the payment without a (new) financial statement.

3. Question: Is it possible to repay a capital loan with a new capital loan although the repayment conditions are not otherwise fulfilled?

Answer: Yes. The amount of the new capital loan is (usually) defined in euros and therefore it can be easily and surely calculated at the time of the repayment.

4. Question: Does a company have an obligation to book the interest of a capital loan in case the payment conditions of the FCA are fulfilled?

Answer: Briefly, from the accounting point of view, yes.

5. Question: How a capital loan and interest of a company in liquidation may be paid?

Answer: If a company is in liquidation, the capital loan and interest of the capital loan may be paid subordinate to all other debts. The payment conditions of the FCA 12:1.1 § 2) need not to be taken into account.

6. Question: Is it possible to take into account a collateral when calculating the amount of the equity of a company in accordance with the FCA 20:23 §?

Answer: No, a collateral may not be considered as a capital loan in the calculation.

For further information, please contact

Mikko Reinikainen, mikko.reinikainen@fi.pwc.com, tel. +358 (0)50 365 8577
Leena Oksanen, leena.oksanen@fi.pwc.com, tel. +358 (0)40 522 6054