Corporate Income Tax

FINLAND

Decision 2014:36 of Supreme Administrative Court, 27 February 2014

The premises of a mutual real estate company A (MREC A) had been used by its parent company B Oy for business activities. A requested that it should be taxed in accordance with the Finnish Business Income Tax Act (BITA), similar to its parent company, instead of the Finnish Income Tax Act (ITA). The Supreme Administrative Court ruled that A should be taxed in accordance with BITA. Based on the fact that the premises of A had been used for the business purposes of its parent company B, there is such a connection between A and B that also A should be taxed in accordance with the provisions of the BITA.

Decision 6.3.2014/682 of Supreme Administrative Court

According to the judgment, the period for applying for a permit to file an appeal in the Supreme Administrative Court (SAC) of 30 days started on Sunday 29 December 2013 i.e. the day the appellant was informed on the decision under the appeal. Hence, the application for the permit should have been filed in the SAC by Tuesday 28 January 2014. As the application arrived on Wednesday 29 January 2014, the application was not examined.

Advance ruling 8/2014 by Central Tax Board, 19 February 2014

City A planned to incorporate its harbor business activities into a company in a tax neutral transfer of assets in accordance with BITA. The city carried out the harbor activities in its own area and A was not liable to pay income taxes on said activities. According to ruling, the contemplated transfer was not tax neutral as City A was not liable to pay income tax. Advance ruling was given for tax year 2014. The ruling is not legally valid.

Equity Ratio Test in accordance with the Interest deduction limitation rules – Differences between Finnish Accounting Standards and International Accounting Standards

Advance rulings 4/2014 and 6/2014 by the Central Tax Board, 29 January 2014

The interest deduction limitation rules in accordance with the Finnish interest deduction limitation rules are not applied if the ratio of the company’s equity to total assets (“equity ratio”) is equal to or higher than the equity ratio calculated on the basis of a consolidated balance sheet of group.
The Central Tax Board gave two preliminary rulings (4/2014 and 6/2014) regarding how depreciation difference and provision for a residential building are taken into account when comparing equity ratios. In both cases, the company’s own financial statements were prepared according to Finnish Accounting Standards and the group consolidated financial statements were prepared according to International Accounting Standards, and the items in questions were booked differently in those accounts.

The Central Tax Board stated that in both cases it was a question of technical differences. The Central Tax Board ruled that for the purposes of comparing equity ratios, both the depreciation difference and the provision in question can be considered as equity items deducted with deferred tax liability.
The rulings are not yet legally valid.

Advance ruling 10/2014 by the Central Tax Board, 19 February 2014

A Oy was a parent company in a group of companies carrying out activities in the energy sector. City X owned a majority of shares in A Oy, and A Oy and its subsidiaries were part of the Municipal Group of city X. City X did not have a legal obligation to prepare consolidated financial statements. The Central Tax Board decided in its preliminary ruling that a consolidated balance sheet of A Oy was deemed as a consolidated balance sheet as defined in the section 18 a § in the Finnish Business Income Tax Act .
The ruling is not legally valid.

Tax Administration's updated guidelines regarding the application of the act on repurchase value of buildings

Tax Administration has updated its guidelines on the application of the Act on repurchase value of buildings. The updated version takes into consideration the changes in legislation and legal praxis.

RUSSIA

Ministry of Finance clarification on deduction related to interest previously deemed as income

The Russian Ministry of Finance issued a Letter (No. 03-03-06/2/1393) on a tax deduction against accrued interest income in a situation where the interest rate of loan is retroactively decreased, the loan is repaid or the credit agreement is terminated with retroactive effect.

Ministry of Finance clarification on applicability of thin capitalization rules in case where loan is secured by foreign shareholder

On 23 December 2013 the Russian Ministry of Finance issued a Letter (No. 03-08-05/56706) regarding applicability of thin capitalization rules in a case where a Russian bank has granted a loan to a Russian company and the loan is secured by a foreign shareholder which owns directly more than 20% of the capital in the Russian company. The Ministry of Finance pointed out that thin capitalization rules are applicable in this situation and the interest paid on the basis of the loan agreement is not entirely deductible if the controlled debt-equity ratio exceeds 3 to 1. The excess interest is deemed as dividend from a tax perspective. Further, the Ministry of Finance stated that tax the interest received by the lender is regarded as entirely taxable interest income.

USA

On 5 March 2014, Finland and the United States signed an agreement concerning FATCA. Pursuant to the agreement, Finland and the U.S will commence automatic exchange of tax information.

On 5 March 2014, Finland signed an intergovernmental agreement with the United States on the application of FATCA (Foreign Account Tax Compliance Act) in Finland. FATCA is a U.S. legislative framework, under which the U.S. seeks to prevent tax avoidance of U.S. resident taxpayers via foreign financial institutions.

In the intergovernmental agreement, Finland has agreed to introduce legislation requiring financial institutions to identify their clients' U.S. taxpayer status and to report information relating to payments and account balances of clients identified as "US accounts" to the Finnish Tax Administration. The information reported includes, for example, interest income, income from dividends and derivatives, life insurance payments and gross sales prices of shares and bonds. The Finnish Tax Administration shall forward the information to the U.S tax authorities. The Tax Administration will provide guidance on the application of Finnish legislation.

From the point of view of the clients of financial institutions, the effects of the agreement can be seen e.g. as an increased number of questions during bank account opening process. The questions are intended to facilitate the identification of the clients' taxpayer status in the United States. "Reportable accounts" are accounts that are identified as being held by persons who are "U.S. persons" for U.S. tax purposes. "U.S. Persons" include citizens of the United States (also persons with dual or triple citizenship), permanent resident aliens (i.e. "Green Card" holders), and companies established in the United States. Also non-U.S. companies with substantial owners that are "U.S. persons" are considered "Reportable accounts" under FATCA.

Finnish financial institutions shall begin to identify their clients' U.S. status in accordance with FATCA as of 1 July 2014. The first reporting to the Tax Administration takes place in 2015.

The newly signed intergovernmental FATCA agreement can be seen as a step towards preventing tax avoidance by means of multinational automatic exchange of tax information. A similar agreement has been concluded with the U.S. by over 20 countries, including e.g. the United Kingdom, Germany, France, Spain, Italy, Denmark and Norway. The Organization for Economic Cooperation and Development (OECD) is also designing a global framework for automatic exchange of information (Common Reporting Standard, CRS). The detailed framework plan was accepted in February 2014. The main objective of the CRS is to promote the exchange of tax information not only with the U.S. but also between other countries. Finland intends to be among the first countries adapting the CRS. Furthermore, the European Union has expressed an intention to increase automatic exchange of tax information between the member states by revising the EU Council Directive on Administrative Cooperation in the Field of Taxation.

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Corporate Law

Expiration of the debt of dividend distribution

The purpose of the company is normally generate profits for its shareholders. Company shall carry out this purpose for example by distributing profit for its shareholders. The debt of dividend distribution shall be formed and enrolled to company`s accounting on the basis of the decision of dividend distribution. The debt of dividend distribution is a debt of the distributing company towards its shareholders. As any other debt, also the debt of dividend distribution may expire. In this article the expiration of the dividend distribution is examined on the basis of Limited Liability Companies Act (624/2006) and on the basis of Act for the Expiration of Debt (728/2003).

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