Tax news
PwC Finland

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Corporate Income Tax

FINLAND

Decision 18.3.2014/821 of the Supreme Administrative Court

According to the Supreme Administrative Court's decision, an application for the permission to use confirmed tax losses despite of the change in ownership of company, cannot be left non-investigated by the tax authorities only because the financial statements of the company related to the year of handling the application have not been prepared. The decision changes the prevailing tax practice of Finnish tax administration.

Decision 7 March 2014 of the Administrative Court of Helsinki, 14/0213/4

The decision concerned a situation where shares in a Finnish company were transferred between group companies in an international group. The transfer of shares was executed in such a way that finally, a Danish company sold shares in the Finnish company to its Danish subsidiary which further allocated the shares to its Finnish branch. Purchase price of the shares was EUR 650m out of which EUR 500m was loan from the Danish company to the Finnish branch.

After the arrangement, a Finnish group company paid group contributions to the Finnish branch which reduced its taxable income. The branch treated the interest expenses paid to the Danish company as tax deductible expenses and therefore, was not in a tax paying position.

According to the Administrative Court of Helsinki, the intra-group arrangement was not based on business reasons and it was made in order to avoid taxes. Hence, the Administrative Court decided that the interest payments to the Danish company were not considered tax deductible in accordance with the provisions of the Business Income Tax Act.

The decision is not legally valid.

RUSSIA

Letter of Ministry of Finance on the application of the participation exemption regime

The Russian Ministry of Finance issued a Letter (No. 03-03-10/379) on 13 January 2014 regarding the application of the participation exemption regime in a situation where the parent company receiving dividends from its subsidiary has been subject to reorganization by way of absorption.

For the participation exemption regime, the parent company must hold the shares in its subsidiary at least 365 days in addition to a 50 percent participation threshold (or more). The Ministry of Finance concludes that the period of holding of the shares in the subsidiary by the parent company can be taken into consideration when calculating the time of the holding period of the receiving company, provided that prior to the reorganization at least one of the companies taking part in the reorganization fulfilled the criteria of the 365-day holding period. In other cases the calculation of the 365-day period starts from the date the reorganization comes into force.

Decision of Federal Arbitration Court of Moscow Circuit on unjustified tax benefits related to debt financing

The Federal Arbitration Court of Moscow Circuit gave a decision (No. A40-18786/13-140-58) on unjustified tax benefits claimed by a Russian company due to a sham loan agreement and subsequent claims on 16 January 2014.

The case concerned a Russian company that had taken loans from its Cypriot parent company. Upon a tax audit of the Russian company, the tax authorities considered that the loan agreements were in fact investment agreements aimed at the acquisition of assets in different Russian entities. Thus the interest deductions made by the Russian company were considered as unjustified and were re-classified as dividends.

The Federal Arbitration Court of Moscow Circuit ruled in favor of the tax authorities in the matter stating that the loans in question were not loans by their true economic intent. According to the Court, the taxpayer never had the intention of repaying the loans to the Cypriot parent company and the parent company never expected to receive the respective interest income from the Russian company.

DENMARK

Governmental proposal for amendments in exit tax provisions enacted

A government proposal for the enactment of amendments in Danish exit tax provisions, mentioned in Tax Express issue 1/2014 earlier this year, has been enacted in its proposed form. Further details on the enacted amendments to Danish exit taxation can be read from Tax Express issue 1/2014.

OECD

OECD has released a joint statement by the countries committed to early adoption of the new global standard on automatic exchange of information

On 19 March 2014 OECD has released a joint statement by the countries committed to early adoption of the new global standard on automatic exchange of information (the Common Reporting Standard, CRS). The aim of the automatic exchange of information is to clamp down on tax evasion. Finland has announced that it will be among the first countries adopting CRS. Under present conditions the standard is due to come into effect from the beginning 2016 onwards when also the identification of new accounts in accordance with the CRS begins. Identification of pre-existing accounts is carried out in stages within 1-2 years. The aim is that the first exchange of information would take place in autumn 2017.

States involved in joint statement: Argentina, Belgium, Bulgaria, Colombia, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, and the United Kingdom; the UK's Crown Dependencies of Isle of Man, Guernsey and Jersey; and the UK's Overseas Territories of Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks & Caicos Islands.

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Corporate Law

Strengthening company's equity

In case a limited liability company has turned a loss for a long time and the amount of its equity has become minor, there often arises a need to strengthen the balance sheet of the company. According to the Finnish Companies Act, if the Board of Directors of a Finnish company notices that the company has negative equity, the Board of Directors shall notify the loss of share capital without delay for registration to the Finnish Trade Register. By strengthening its equity the company may avoid the registration obligation arising from the loss of share capital. In order to strengthen the equity of the company, there are several options, of which most commonly used measures are a capital loan, a share issue and other capital investment such as converting a company's debt.

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