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Corporate Income Tax

FINLAND

Goodwill could be deducted as annual depreciation even though it was not recorded in the accounts

Supreme Administrative Court, decision 2015:43

A Oy had applied for an advance ruling concerning whether goodwill could be regarded as long-term expense as defined in Section 24 of Business Income Tax Act and deducted as annual depreciations even though it was not recorded in the balance sheet of A Oy. The Supreme Administrative Court kept the Central Tax Board's decision in force, according to which A Oy can deduct the goodwill even though the same depreciation is not made in the accounts.

A direct technical access to Tax Administration's register cannot be granted for the purpose of providing public taxation information

Supreme Administrative Court, decision 2015:41

A company carrying out financing activities had applied for a technical access to Tax Administration's register of natural persons' public taxation information. The Supreme Administrative Court held that there is no such legal provision which allows the direct access. The decision was the same in the lower court and in Tax Administration.

Interest deduction limitation provision is applicable to interest expenses amortised in accordance with Section 27 c of the BITA

Supreme Administrative Court, decision 2015:37

A Oy had applied for an advance ruling regarding whether interest deduction limitation provision as defined in Section 18 a of Business Income Tax Act ("BITA") is applicable to interest expenses amortised in taxation in accordance with Section 27 c of the BITA as straight-line depreciations. The Supreme Administrative Court held that the interest deduction limitation provision is applicable to such interest expenses.

Decision 5 March 2015 of the Administrative court of Helsinki, 15/0298/3

Company X Ltd divided into two companies, A and B. Company B received all stocks related to the business activities' source of income and also losses related to them. However, Administrative Court of Helsinki decided that the losses of dividing company should have been transferred for both companies pro rata to transferred net assets.





Distribution of assets from a limited company, when the company's shareholder has already been taxed on same income

Tax Administration's comment

According to the comment, distribution of assets, of which the comparable amount has already been taxed as earned income to the shareholder, cannot be taxed again as income, like dividend, received by the shareholder.

Interest for withholding tax refund to non-tax resident

Along with the The Supreme Administrative Court's decision (KHO 2013:148), the Tax Administration has changed its practices and started to pay interest for refundable withholding taxes for those of limited liability to tax. The interest will be taken into account in all refund applications to which the Tax Administration has not yet given its final decision. If the non-residents consider being entitled to the interest for withholding tax refund but have not received it, they need to apply for the payment. The amendment is effective as of 2015.

EU

European Commission published Tax Transparency Package

On 18 March 2015, The European Commission presented the Tax Transparency Package, which aims to prevent corporate tax avoidance and harmful tax competition within the European Union.

The package aims to ensure that the Member States would have in the future the necessary information to protect their tax bases and the effective identification of tax avoiding companies.

A central part of the package is the Directive proposal that would require Member States to introduce the automatic exchange of information between the Member States on their tax rulings.

According to the Commission's proposal, the tax authorities of the Member States would be required to send a short report to all other Member States every three months on all their cross-border tax rulings and advance pricing arrangements.

Another Member States could also request for additional details on the rulings if necessary. Currently the Member States can decide whether their tax rulings are of relevance to other Member States.

The package includes also other tax transparency initiatives, such as the assessment of possible new transparency requirements for multinationals, the review of the Code of Conduct on Business Taxation, the repeal of the Savings Tax Directive which has been covered by other EU legislation, and further quantifying of the scale of tax evasion and avoidance within EU countries.

The two Directive proposals will be submitted to the European Parliament and to the Council.

According to the Commission's understanding, political commitment on the proposals is expected to be reached timely before the end of 2015, thus the Directive proposal regarding automatic exchange of information could be entered into force on 1 January 2016.



Regarding earlier amendments to the Directive 2011/16/EU concerning mandatory automatic exchange of information in the field of taxation, please see our earlier article Tax news, 30 October 2014.

SWEDEN

Tax administration clarified when company representatives can be held personally liable for company's unpaid taxes

The Russian Ministry of Finance clarified in its letter issued on 12 December 2014 the preconditions for the application of tax treaties when a non-resident receives passive income derived from Russian sources.

The recipient of the income should be the beneficial owner of the income and be resident in a state that has concluded a tax treaty with Russia in order to the tax treaty and the possible lower withholding tax rate to apply.

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Transfer Pricing

Belgia initiates new wave of transfer pricing audits and considers mandatory transfer pricing documentation

The Belgian tax authorities have opened a new season of transfer pricing audits, similar to those initiated two years ago. Approximately 200 corporations have been selected for and in-depth audit on their transfer pricing arrangements.

Elements such as fluctuating or deviating profitability margins, high intercompany leverage, restructurings or a structurally loss-making activity are considered as risk-factors and typically lead to a higher probability of a transfer pricing investigation.

The request for information is the formal starting point of an audit that typically takes multiple months to complete. Changes were made to the questionnaire with an increased focus on financial transactions. It is in principle mandatory to reply to the request for information within one month.

Even though the questionnaire appears general in nature it is crucial to carefully prepare and tailor the reply to the company's specific situation.

Experience shows that the first round of exchange of information has significant impact on the further evolution of the audit.

It is also strongly recommended to request a "pre-audit" meeting with the tax inspectors for example to explore the background of the audit and to delineate the scope of the investigation.



It moreover enables taxpayer to highlight important industry or company-specific elements that need to be taken into account from a transfer pricing perspective.

It is also good to be aware that both the Belgian Minister of Finance and the Belgian Government are supportive of implementing the recommendations in relation to transfer pricing documentation and country-by-country reporting (OECD BEPS Action Point 13).

A feasibility study and benchmark study is in progress and should shortly shed clarity on the introduction of mandatory transfer pricing documentation regulations in Belgium.

[More information](#)

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Corporate Law

What is crowdfunding all about?

In general, crowdfunding refers to a call for funds for a specific project or enterprise, usually through the internet.

Crowdfunding as a financing form has strongly emerged in the past few years, which has raised a number of questions concerning legislative measures both in Finland and on the EU level.

At the moment there is no specific Finnish statutory law on crowdfunding which means that various different regulations have to be taken into consideration.

Nor is there any EU legislation that would be specific or separate for crowdfunding, although provisions concerning it can be found in a number of different directives and regulations, e.g.

Markets in Financial Instruments Directive (2004/39/EC), Prospectus Directive (2003/71/EC) and Alternative Investment Fund Managers Directive (2011/61/EU).

Although crowdfunding is under much discussion in the EU, no crowdfunding-specific legislation is to be expected this year.

In Finland, on the other hand, a draft Government Proposal concerning investment-based crowdfunding and intermediation of peer-to-peer loans is expected to be released and subjected to public consultation in spring 2015.

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