The International Comparative Legal Guide to: Corporate Tax 2012

A practical cross-border insight to corporate tax work

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1 General: Treaties

1.1 How many income tax treaties are currently in force in Finland?
Finland has an extensive treaty network with appr. 100 tax treaties (including all kinds of tax treaties) currently in force or coming into force.

1.2 Do they generally follow the OECD or another model?
Finnish tax treaties generally follow the OECD model. Since the treaties are often tailored to the Finnish or a foreign tax system, there are a few exemptions from the OECD model.

1.3 Do treaties have to be incorporated into domestic law before they take effect?
Yes. Finland follows the so-called dualistic method. Therefore tax treaties must be incorporated into Finnish law by an act enacted by the Parliament.

1.4 Do they generally incorporate anti-treaty shopping rules (or “limitation of benefits” articles)?
In general, Finnish tax treaties do not incorporate anti-treaty shopping rules. However, the treaty with the US contains a limitation of benefits clause and the treaties with the UK and Ireland contain a limitation of relief clause. Pursuant to the general opinion in legal literature, domestic anti-avoidance rules can be applied in case of artificial arrangements. Furthermore, some treaties exclude certain entities from the scope of application.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?
No. Tax treaties prevail over domestic legislation regardless of whether the domestic legislation is introduced prior or subsequent to them. However, please see what is stated on the use of anti-avoidance rules above, under question 1.4.

2 Transaction Taxes

2.1 Are there any documentary taxes in Finland?
Please see what is stated under question 2.5 below, regarding transfer tax.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?
Yes, Finland has VAT. In principle, all sales of goods and services are subject to VAT, however, the rate of VAT may vary. The standard rate is 23%. Besides the standard rate, there are reduced rates for certain supplies: 13% on e.g. foodstuffs; 9% on e.g. books and medicine.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?
In principle, all sales of goods and services are subject to VAT. However, certain supplies are exempted from VAT as permitted or required by Community Law. The following goods or services are exempted from VAT: i) financial and insurance services; ii) educational services; iii) medical services; iv) the selling and leasing of real property; and v) most corporate transactions such as transfers of business, and the sale and exchange of shares. However, VAT liability may arise if a transaction involves a transfer of assets located in Finland, with the exception of a transfer of a business or the removal of assets from Finland. Even though the sale of real property itself is VAT-exempt it may trigger an obligation to recover VAT deductions made in respect of certain investments in the property, covering a ten-year period prior to the sale.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?
When goods and services are supplied for a business subject to VAT, the VAT paid is fully recoverable. If only a part of the business is subject to VAT, only the VAT related to this business is recoverable. Certain goods or services used for entertainment purposes are, however, excluded from the general right of deduction.

2.5 Are there any other transaction taxes?
Yes, there is a transfer tax which is payable on the transfer of real
property located in Finland and the securities of Finnish companies. The rate of the transfer tax is 4% of the transfer price of a real property and 1.6% of the transfer price of securities. However, the transfer tax is not payable on the transfers of publicly listed securities.

The party liable to pay the tax is the transferee of the real property or securities. If the transferee is neither a resident of Finland, a Finnish branch of a foreign credit institution, nor a financial services or fund management firm, the transferor must collect the tax from the transferee, as the tax authorities may collect the tax from transferor.

2.6 Are there any other indirect taxes of which we should be aware?

There are excise duties levied on alcohol, tobacco products, liquid fuels, electricity, sweets, waste, oil waste and oil damage. Furthermore, there are custom duties for goods imported from outside the internal EU market.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

In the absence of a tax treaty and provided that the EC Parent-Subsidiary Directive (90/435/EEC) does not apply, dividends paid to a non-resident company are taxed at source. The rate of the withholding tax is 28% (an increase to 30% is planned for 2012). However, dividends paid to a recipient residing in the European Economic Area (“EEA”) are also exempted from tax in such cases where a similar, Finnish recipient would be exempted from tax. This may grant an exemption from withholding tax, e.g. for certain foreign investment funds and charitable entities. This amendment, which came into force in 2009, is based on the practice of the Court of Justice of the European Communities. Thus, any recipients of Finnish dividends within the EEA should consider claiming the withheld taxes retroactively.

Dividends paid to a Finnish permanent establishment (“PE”) of a non-resident company are not subject to a withholding tax but are taxed as an income of the PE.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Royalties paid to a non-resident are taxed at source, and thus subject to a withholding tax of 28% (an increase to 30% is planned for 2012), unless tax treaty provisions or the EC Interest and Royalty Directive (2003/49/EC) prevent taxation in Finland. However, the royalties paid to a Finnish PE of a non-resident company are not subject to a withholding tax but are taxed as an income of the PE.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

According to the internal law of Finland, interest paid to a non-resident is usually exempt from taxation in Finland, so no withholding tax is payable on interest payments. However, interest paid to a loan comparable to equity may be subject to a withholding tax.

3.4 Would relief for interest so paid be restricted by reference to “thin capitalisation” rules?

Finnish tax law does not include a thin capitalisation rule. However, it is possible, in cases involving a clear tax avoidance situation, to apply the general anti-avoidance rule to deny the tax deductibility of interest on excess debt and to treat it as dividend for the purposes of withholding taxes. Due to recently enacted restrictions in deductibility of interest in many European countries, Finland has been considering similar restrictions including possible thin capitalisation rules. So far, no government bill has, however, been given on this subject.

3.5 If so, is there a “safe harbour” by reference to which tax relief is assured?

No, there are not any “safe harbour” provisions. However, in order to avoid problems in the deductibility of interest payments, the (at) arm’s-length principle should be applied.

3.6 Would any such “thin capitalisation” rules extend to debt advanced by a third party but guaranteed by a parent company?

This is not applicable in Finland.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

As mentioned above under question 3.4, Finland has for some time been considering introducing restrictions to the deductibility of interest costs. So far, no government bill has been given, but in 2009 the Ministry of Finance published a report on potential alternatives for restricting interest deductions. The suggestions for restricting interest deductions include, among others, traditional thin capitalisation rules, interest deduction restrictions based on income statements (similar to e.g. the German EBIT / EBITDA based restriction), general anti-avoidance rules and withholding taxation of interest income for non-residents.

It is notable that even though no new restrictions have been introduced in the legislation level, the Finnish tax authorities have in tax practice adopted a stricter approach in matters concerning the deductibility of interest based on anti-avoidance rules (e.g. debt push downs). In addition, there is, e.g., a pending case in which the debt has been reclassified as equity based on transfer pricing rules.

3.8 Does Finland have transfer pricing rules?

Yes. The transfer pricing rules apply the arm’s-length principle to all transactions between both domestic and international group companies. The rules also lay down a documentation obligation in cross-border situations.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

Corporate income in Finland is subject to a flat rate tax of 26% (2011). A reduction of the corporate income tax rate to 25% is planned for 2012.
4.2 When is that tax generally payable?

Corporate tax is payable annually, approximately eleven months after the end of the financial year, but due to the advance tax system it is generally paid as monthly installments throughout the financial year. The amount paid in the monthly installments is determined on the basis of an estimate of the taxable income during a respective tax year provided by the taxpayer, or an estimation made by the authorities based on the taxable income of the previous year. If advance taxes are paid, the amount of taxes paid is deducted from the annual final payment.

There is also a possibility to make a supplementary tax payment within four months after the end of the accounting period of the respective tax year, to avoid cumulative interest on the final tax payment.

4.3 What is the tax base for that tax (profits pursuant to commercial accounts subject to adjustments; other tax base)?

The tax base for corporate income is generally the statutory commercial accounts of the respective accounting period. However, this is subject to certain adjustments for tax purposes.

4.4 If it otherwise differs from the profit shown in commercial accounts, what are the main other differences?

Certain expenses are not deductible for tax purposes and there are certain differences between the depreciation of assets for accounting and tax purposes.

There are also some tax-free income items such as tax-free capital gains (see the answer to question 5.3 below) and dividends. Dividends derived from non-tax treaty countries outside of the European Union and 75% of the dividends from publicly listed companies received by non-listed companies which have an ownership stake of less than 10% are, however, not exempted.

Differences may also take place in connection of the taxation of income of a controlled foreign corporation (“CFC”, please see answer to question 7.3 below) or income from a partnership (in both cases shareholder’s or partner’s share of a CFC’s or partnership’s income is taxable and actual distributions are exempted).

4.5 Are there any tax grouping rules? Do these allow for relief in Finland for losses of overseas subsidiaries?

No, Finland does not have group taxation. However, under the group contribution regime, group contribution between two Finnish resident companies or PEs is deductible, provided that certain preconditions are met. A group contribution is taxable income for the receiving entity and tax-deductible for the paying entity.

By giving a group contribution to a PE with debt, it may be possible to get a “double dip” on interest in some cross-border situations. Cross-border group contribution is generally not allowed, but there are still pending cases related to situations where the group contribution has been given to a loss-making liquidated subsidiary in another EU country.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No, tax is not imposed at a different rate upon distributed profits.

4.7 Are companies subject to any other national taxes (excluding those dealt with in “Transaction Taxes”) - e.g. tax on the occupation of property?

Finland has a municipal real property tax payable on owning real property, including buildings. The amount of real property tax varies between 0.3% and 3% of the value of the real property determined for tax purposes, depending on the real property and its use.

4.8 Are there any local taxes not dealt with in answers to other questions?

In addition to the taxes mentioned earlier, there are no other relevant local taxes.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Generally, capital gains and losses are taxed as ordinary business income at the same rate of 26% (planned reduction to 25% in 2012) and the losses can be carried forward for ten years. However, there are a few limitations to the deductibility of losses derived from a passive (non-business) income source and from fixed asset shares. Capital losses attributable to the passive income source can only be deducted from capital gains arising from the same source and the losses can only be carried forward for five subsequent years. Regarding fixed asset shares, please see what is stated under question 5.3 below.

5.2 If so, is the rate of tax imposed upon capital gains different from the rate imposed upon business profits?

No. Capital gains are considered a part of business income and therefore taxed at a flat rate of 26% (planned reduction to 25% in 2012).

5.3 Is there a participation exemption?

Yes. A company can make tax-exempt capital gains by disposing of shares, provided that the conditions listed below are met. Correspondingly, losses from the disposal of such shares are non-deductible.

The tax exemption requires that the disposed shares:

i) give entitlement to an ownership of at least 10% of the share capital in the target company;

ii) have been owned for at least one year;

iii) are determined as fixed assets of the vendor;

iv) are not shares in a housing or a real estate company; and

v) are shares of either a Finnish company or a company subject to the EC Parent-Subsidiary Directive; or that there exists a tax treaty between Finland and the resident State of the company disposed of which must be applied to any dividend paid to the vendor.

Further, the exemption requires that the vendor is not deemed a private equity investor. In some cases the private equity investor status may be beneficial when holding fixed asset shares, since a private equity investor may be able to utilise the goodwill, included in the purchase price of the shares.

If these preconditions are not met, capital gains are taxable, as well
as losses deductible against capital gains made on the disposal of shares during the five years following the disposal.

5.4 Is there any special relief for reinvestment?

Yes, there is a possibility to make a deduction corresponding to a taxable gain incurred in connection with (i) insurance compensation received due to the destruction of fixed assets by fire or other damage if new assets are acquired or the old ones are repaired within a span of two years, or (ii) capital gain from the sale of business premises if new premises are acquired within two years. Other reliefs for reinvestment include exempted share exchange and business transfer provisions, where the capital gain incurred from the sale of shares or business assets is, in certain cases, exempted if the shares of the recipient are received as consideration. The tax is deferred until the shares received as consideration are sold in a taxable sale.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

There are no taxes imposed upon the formation of a subsidiary.

6.2 Are there any other significant taxes or fees that would be incurred by a locally formed subsidiary but not by a branch of a non-resident company?

No, there are no other significant taxes or fees of that kind.

6.3 How would the taxable profits of a local branch be determined?

Generally, all branches are obliged to arrange bookkeeping in accordance with Finnish GAAP. However, there are no specific rules which determine the profits allocable to a Finnish branch. In practice, non-resident companies are taxed on their income derived from Finland and PE’s are taxed on all income attributable to the permanent establishment.

6.4 Would such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

There is no branch profits tax. However, provided that a PE is constituted, branches are subject to the general corporate tax in Finland and taxed on the net profit attributable to the branch.

6.5 Would a branch benefit from tax treaty provisions, or some of them?

No, apart from non-discriminatory rules (in case the branch forms a PE).

6.6 Would any withholding tax or other tax be imposed as the result of a remittance of profits by the branch?

No, there would not be a withholding or other tax imposed in such cases.

7 Overseas Profits

7.1 Does Finland tax profits earned in overseas branches?

The profits of a Finnish company’s branches abroad are generally included in the company’s taxable income. A foreign tax credit is available for the branch’s foreign taxes. Under some tax treaties, the branch’s income may be exempted from Finnish tax (exemption method).

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Dividends received by a Finnish company from a non-resident company are in many situations tax-exempt. Dividends derived from non-tax treaty countries outside of the European Union are, however, 100% taxable income for a Finnish company. Furthermore, 75% of the dividends from publicly listed companies received by non-listed companies which have an ownership stake of less than 10% are subject to the corporate income tax.

7.3 Does Finland have "controlled foreign company" rules and if so when do these apply?

There are CFC rules in place in Finland. The shareholder’s share of a CFC’s income is taxable as shareholder’s income and actual distributions are exempted. A foreign company controlled by a Finnish tax resident may generally be regarded as a CFC, if the actual income tax level of the company is less than 3/5 of the corporate income tax level in Finland. There are important exceptions from this general rule. These concern e.g. companies mainly engaged in industrial production or shipping activities in the country of tax residence, companies resident in tax treaty countries (if neither subject to special tax reliefs nor resident in a black-listed tax treaty country) and companies resident in EEA countries or tax treaty countries with which Finland has sufficient information exchange arrangements in place (if de facto established and conducting business in that country).

8 Anti-avoidance

8.1 Does Finland have a general anti-avoidance rule?

There is a general anti-avoidance rule for preventing tax avoidance. According to the anti-avoidance rule, a legal form of a situation, or a measure which does not correspond to the true nature or purpose of the matter, shall be taxed as if the correct form had been used. In order to avoid the application of the anti-avoidance rule, the arrangement in question must have other than tax-related justifications (i.e. business reasons).

8.2 Is there a requirement to make special disclosure of avoidance schemes?

There is no such requirement.
Ossi Haapaniemi heads the tax group at Hannes Snellman. His fields of expertise include public and private M&A, capital markets, financial instruments, incentive schemes, EU tax law and tax litigation. Haapaniemi’s career to date has included positions as tax auditor at a provincial tax office, tax manager at Arthur Andersen, as well as a director in charge of structuring and taxation of M&A and capital markets transactions at Evli Corporate Finance (later Evli Bank). He has vast experience and in-depth knowledge of corporate taxation, especially of financial instruments, corporate finance transactions and incentive schemes. He is a frequent speaker at seminars and has written numerous articles and books on taxation. In 2006, he successfully defended his tax law dissertation on the Tax Treatment of Stock-Based Incentive Schemes. He has been the Finnish IFA branch reporter in 2000 (the hybrid financial instruments) and 2009 (the foreign exchange issues).

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