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Practical cross-border insights into corporate tax law

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

Finland has a fairly extensive treaty network, with approximately 70 income tax treaties currently in force.

1.2 Do they generally follow the OECD Model Convention or another model?

Finnish tax treaties generally follow the OECD Model, with some inevitable variation from one treaty to the next.

1.3 Has your jurisdiction signed the tax treaty MLI and deposited its instrument of ratification with the OECD?

Yes, Finland signed the multilateral instrument ("MLI") on 7 June 2017 and deposited its instrument of acceptance on 25 February 2019.

1.4 Do they generally incorporate anti-abuse rules?

In general, Finnish tax treaties do not incorporate specific anti-abuse rules. However, the treaty with the US contains a "limitation on benefits" clause, and the treaties with the UK and Ireland contain a "limitation of relief" clause. Moreover, as a result of the approval and signing of the MLI, article 7 of the MLI can be applied alongside most Finnish tax treaties. Finally, pursuant to case law, domestic anti-avoidance rules can be applied in case of artificial cross-border arrangements.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

No, but the Finnish general and special anti-avoidance rules (the "GAAR" and the "SAARs", discussed in question 9.1 below) can, in principle, apply if there are abusive arrangements seeking to exploit particular provisions in a double tax treaty, or the way in which such provisions interact with other provisions of Finnish tax law.

1.6 What is the test in domestic law for determining the residence of a company? Has the application of the test been modified in response to COVID-19?

A company that is incorporated in Finland will automatically be resident in Finland. As of 1 January 2021, a company can be deemed resident in Finland and generally liable to tax in case its place of management, i.e. if the location where the day-to-day decisions of the highest company organ are made, is located in Finland. This amendment has not been related to COVID-19 as such, but rather made in response to the international development of tax regulation and tax competition.

1.7 Is your jurisdiction's tax authority expected to revisit the status of dual resident companies in cases where the MLI changes the treaty "tiebreaker"?

Finland has only ratified the so-called "minimum standards" of the MLI, meaning that article 4 concerning dual resident entities does not become applicable. Thus, the tax liability of dual resident companies shall be determined on the basis of the existing clauses in applicable tax treaties.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

Please see question 2.6 below regarding transfer tax.

2.2 Do you have Value-Added Tax (VAT), or a similar tax? If so, at what rate or rates? Please note any rate reduction in response to COVID-19.

Finnish VAT legislation gives effect to the relevant European Commission ("EC") Directives.

There are three rates of VAT:

- the standard rate of VAT is 24% and applies to any supply of goods or services that is not exempt or subject to the reduced rate of VAT;
- the reduced rate of VAT is 14% (e.g. foodstuff and restaurant and catering services); and
- 10% (e.g. passenger transportation, hotel services, theatre, sporting events, medicine and books).

No reductions have been proposed as a response to COVID-19.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

The exclusions from VAT are as permitted or required by the Directive on the Common System of VAT (2006/112EC) (as amended), and some examples of exempt supplies are:

- the sale and letting of real estate (however, a lessor of real estate may opt for VAT);
- medical services;
- educational services;
- insurance services; and
- banking and other financial services.

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, input VAT is fully recoverable. If only a part of the business is subject to VAT, only the VAT related to that business is recoverable. Certain goods or services used for entertainment purposes are, however, excluded from the general right of deduction.

2.5 Does your jurisdiction permit VAT grouping? If so, how does this apply where a company in one jurisdiction has an establishment in another?

Yes. Finance and insurance companies may opt for VAT grouping. The registration is made in the name of the "representative member", who is responsible for completing and submitting a single VAT return and making VAT payments or receiving VAT refunds on behalf of the group. All members of the group remain jointly and severally liable for any VAT debts of the group. A Finnish branch must generally treat its supplies to the overseas head office as taxable supplies in circumstances where the overseas head office is VAT grouped in its jurisdiction and the branch does not belong to the VAT group.

2.6 Are there any other noteworthy transaction taxes or indirect taxes that are payable by companies?

Transfer of shares in Finnish companies and real property located in Finland is subject to transfer tax. Exceptions apply to listed shares and share transfers between non-residents of Finland.

The rate of transfer tax is 4% of the purchase price of real property, 1.6% of the purchase price of the shares in an ordinary limited liability company and 2% of the purchase price of the shares in a real estate company (including real estate holding companies and housing companies). The transfer tax base also includes any debt or liabilities of the acquired entity (towards the seller or a third party) assumed by the buyer based on the transfer agreement, provided that the assumption of such debt or liabilities accrues to the benefit of the seller.

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

Customs duties are generally payable on goods imported from outside the EU. Excise duties are levied on particular classes of goods (e.g. alcohol, tobacco, electricity and fuel). Insurance premium tax is charged on the receipt of a premium by an insurer under a taxable insurance contract.

3 Cross-border Payments

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

Dividends paid by a Finnish company to non-residents are, in principle, subject to Finnish withholding tax of either 20% or 30%. However, in reality, such withholding is prevented or reduced by the provisions of the EC Parent-Subsidiary Directive (90/435/EEC) or an applicable tax treaty. Under most tax treaties, the withholding tax rate is usually reduced to 0–15% on dividends paid to persons entitled to the treaty benefits. However, a withholding tax rate of 35% (or even 50% in certain circumstances) may be applied to dividends on nominee registered shares, when the shareholder is a foreign tax resident, and necessary information on the ultimate beneficiary is not provided to the custodian.

Further, dividends paid to a recipient residing in an EEA Member State are also exempt from tax to the extent that a Finnish recipient would, under corresponding circumstances, be partly or fully exempt from tax. This can grant an exemption from withholding tax (for example, for certain foreign investment funds or charitable entities). The withholding tax relief is based on EU law and may give foreign investors the right to a retroactive tax refund claim.

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 subject to a withholding tax at the rate of either 20% or 30%, unless tax treaty provisions or the EC Interest and Royalty Directive (2003/49/EC) reduce or prevent taxation in Finland. Royalties paid to a Finnish permanent establishment of a non-resident company are taxed as income of the permanent establishment and no withholding tax is levied.

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

According to domestic Finnish tax laws, interest payments to a non-resident are normally exempt from tax in Finland.

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

Finland has no thin capitalisation rules, but the deductibility of interest expenses is limited under a separate regime. Under the interest limitation regime, interest expenses are fully deductible against any interest income. The potential restriction of any interest exceeding the interest income (i.e. net interest expenses) depends on three tests that are applied on a stand-alone Finnish company level:

1. Net interest expenses may be fully deducted if the total amount of net interest expenses does not exceed EUR 500,000 during the fiscal year.
2. Where the above limit is exceeded, net interest expenses may only be deducted up to an amount equal to 25% of the taxable business profits before interests and depreciations. Received and paid group contributions are taken into account in the calculation of the taxable business profits. Any amount of interest so restricted may be carried forward indefinitely and deducted against unused capacity in later years.

3. To the extent that interest is paid to a non-related party, it can be deducted up to EUR 3 million even when exceeding the above 25% limit. However, it shall be noted that interest expenses paid to a non-related party are considered first. For example, if interest is also paid to a related party and the overall amount exceeds EUR 500,000, interest expenses paid to a related party can only be deducted to the extent the 25% rule is not exhausted.

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

The so-called "safe harbour" rule stipulates that the restrictions on interest deductibility are not applied if the borrower company's equity ratio (equity *vs* total balance) is equal to or higher than the same ratio calculated on the basis of consolidated group balance sheets of the ultimate parent ("balance sheet test"). The balance sheet test can only be applied to consolidated balance sheets that have been prepared in an EU or EEA Member State or a State with which Finland has concluded a tax treaty. Further, the balance sheet should be prepared according to the international accounting standards or alternatively according to the domestic bookkeeping act of the EU or EEA Member State. If the balance sheet of the ultimate parent has been prepared by using accounting standards other than the taxpayer's, the consolidated balance sheet must, in principle, be presented by the taxpayer as a conversion as if it had been completed under the same accounting standards as the taxpayer's balance sheet.

However, it has been proposed that the balance sheet test would no longer be available if interest payments to a party holding at least 10% of the capital of the group is equal to or exceeds 10% of the interest payments made to an unrelated third party. If the proposal is passed, the new legislation is expected to enter into force as of 1 January 2023.

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

Yes. Third-party debt may be reclassified as a related-party debt; for instance, in circumstances where the third-party debt is secured by a receivable of a related party.

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

In addition to general transfer pricing rules (see question 3.9 below), the Finnish GAAR may be applied in respect of arrangements that do not correspond to their actual purpose and meaning, which have as their main purpose the securing of a tax advantage.

3.8 Is there any withholding tax on property rental payments made to non-residents?

Rents paid to a non-resident are considered Finnish-source income and such income must normally be declared in Finland in accordance with the ordinary tax assessment procedure (and taxed accordingly).

3.9 Does your jurisdiction have transfer pricing rules?

Yes. Finnish transfer pricing rules apply to both cross-border and domestic transactions between related parties. If the Finnish tax authorities do not accept that pricing is at arm's length, the applied pricing can be challenged under transfer pricing adjustment rules.

3.10 Can companies in your jurisdiction obtain unilateral, bilateral or multilateral advance pricing agreements?

In principle, yes. However, Finland does not have separate legislation regarding advance pricing agreements and the agreements can be concluded with countries with which Finland has a double tax treaty regarding income and capital taxation, where the article on mutual agreement procedure has been included.

4 Tax on Business Operations: General

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

The corporate income tax rate is currently 20%. There are no planned reductions at the moment, although Finland will closely monitor the changes in other developed and neighbouring countries.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

In general terms, tax follows the commercial accounts subject to adjustments.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

Certain expenses are not deductible for tax purposes and there are certain differences between the depreciation of assets for accounting and tax purposes; for instance, concerning machinery and buildings.

There are also some tax-free income items, such as tax-free capital gains (see question 5.2 below) and dividends.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

The concept of consolidated income tax returns is unknown in Finland. However, under the group contribution regime, group contributions between two Finnish-resident companies or permanent establishments are deductible, provided that certain preconditions are met. A group contribution is similarly taxable income for the receiving entity. The group contribution regime does not allow cross-border loss relief.

4.5 Do tax losses survive a change of ownership?

When more than 50% of shares in a company or its immediate parent company change ownership during a tax year, the right to carry forward tax losses from that year and previous years is forfeited. The tax authorities may grant a dispensation to allow the utilisation of forfeited tax losses.

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

No, it is not.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

The owner of real estate is required to pay real estate tax equal to a fixed percentage of the calculated value of the real estate (i.e. the land area) and the buildings located thereon. The real estate tax value differs, as such, from the tax base value, the book value and the market value of the real estate and the buildings. The rate of real estate tax is set by the municipality in which the real estate is located. However, the minimum and maximum statutory tax rates that the municipalities may apply vary between 0.41% and 6%.

5 Capital Gains

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

Corporation tax is chargeable on "profits", which includes both regular business income and capital gains. There is, however, a separate regime for computing certain capital gains. In circumstances where the participation exemption does not apply, capital losses can only be used against capital gains and not against regular business income.

5.2 Is there a participation exemption for capital gains?

Yes. The participation exemption regime allows business-conducting companies to dispose of certain shares without a Finnish tax charge. Capital gains realised by a Finnish company on the sale of shares are tax exempt, provided that:

i. the shares belong to the selling company's fixed assets and the shareholding is deemed part of the seller's business income source (in comparison with the general income source);
ii. the selling company owns at least 10% of the capital of the company being sold;
iii. the selling company has held such participation for at least one year; and
iv. the disposed shares are not shares in a housing or real estate company.

The company whose shares are sold must furthermore reside in Finland, in another EU Member State or in a country with which Finland has concluded a tax treaty. Further, private equity investors may not benefit from the participation exemption. Where the participation exemption regime applies, any losses incurred from the disposal are non-deductible.

5.3 Is there any special relief for reinvestment?

It is possible to make a deduction in relation to (i) insurance compensation received due to the destruction of fixed assets if the new assets are acquired or the old ones are repaired within two years, or (ii) sold business premises if new premises are acquired within two years.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

No withholding tax is imposed. However, please see question 8.1 below.

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 on the formation of a subsidiary.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

A Finnish-resident subsidiary would pay corporate tax on its worldwide income and gains, whereas a Finnish branch (permanent establishment) would be liable to corporation tax only on the net profit attributable to the branch. There is no separate branch profit tax.

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

Assuming that the local branch of a non-resident company is within the Finnish statutory definition of a "permanent establishment" (which, in most circumstances, will be decided by the provisions in an applicable tax treaty), it will, at the outset, be treated for tax purposes as though it were a distinct and separate entity dealing independently with the non-resident company. Generally, all branches (permanent establishments) are required to arrange bookkeeping in accordance with Finnish generally accepted accounting principles ("GAAP") and are taxed accordingly (subject to certain adjustments).

6.4 Would a branch benefit from double tax relief in its jurisdiction?

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

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

No, it would not.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

As a general rule, and subject to tax treaty provisions, Finland taxes the profits earned in overseas branches of Finnish-resident companies.

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

Foreign dividends and Finnish dividends are treated in the same way. Dividends from foreign subsidiaries are generally exempt in the hands of a Finnish parent company, whereas portfolio dividends from listed companies are fully taxable if the recipient has an ownership stake of less than 10% in the paying listed entity. Dividends derived from non-tax treaty countries outside the EU are, however, fully taxable in Finland.

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

Under the revised Finnish controlled foreign company ("CFC") rules that have been in force since 1 January 2019, the CFC's income tax is taxable as the shareholders' income and actual distributions are exempted. The new CFC regime also applies to non-tax residents of Finland, in case their participation in the CFC relates to their permanent establishment in Finland. A non-resident company controlled by a Finnish tax resident may generally be regarded as a CFC if the CFC is liable to income tax in its domicile at a rate less than 60% of the effective Finnish corporate income tax rate (meaning generally that the corporate income tax rate applicable to a CFC should currently be 12% or less). The CFC regime contains two exceptions. First, it does not apply to entities that are actually resident in another EEA country and carry out genuine economic activities there. Second and similarly, the CFC regime does not apply to entities outside the EEA, provided that the entity in question is actually resident in said jurisdiction and carries out genuine economic activities there. However, the application of the latter exception requires that the non-EEA jurisdiction concerned is not regarded as a non-co-operative jurisdiction and the relevant authorities have agreed upon and actually conducted an information exchange sufficient for the purposes of the CFC regime. Finally, the income of a non-EEA entity must be primarily accrued from specific activities (e.g. industrial production or shipping). The previous industry and tax treaty jurisdiction exceptions have been revoked as such.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Capital gains derived from the sale of real property (whether commercial or private) located in Finland as well as capital gains derived from the sale of shares in Finnish real estate and housing companies, including Finnish limited liability companies whose assets consist of more than 50% of real estate in Finland, are generally subject to tax in Finland. Tax treaty exemptions may, however, apply to certain share disposals.

Nonetheless, it has been proposed that foreign direct and indirect holdings of Finnish real estate companies (of all kinds) would also be subject to Finnish capital gains tax in the future. Capital gains tax will, however, only be triggered if more than 50% of the underlying assets of the company being sold consist of real estate in Finland as at the date of sale or at any point during a period of 365 days before that date. Still, the new rules would not apply in all situations as a number of tax treaties concluded by Finland would not allow for the taxation of indirect real estate investments. If the proposal is passed, the new legislation is expected to enter into force as of 1 January 2023.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

Yes; please see question 8.1 above.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

Yes. However, the Finnish REIT scheme remains limited to residential housing only. Under the REIT scheme, to benefit from corporate tax exemption, REITs (i.e. Finnish limited liability companies) must be listed on a public stock exchange or a multilateral trading facility within the EEA, with no single shareholder owning, directly or indirectly, more than 9.99% of the share capital. At least 80% of the value of the assets of a REIT must also consist of real estate that is used primarily for residential purposes, and the activities of the REIT must be limited to the letting of properties (or activities closely related thereto). The capital structure of a REIT must furthermore be such that its potential debt financing does not exceed 80% of its balance sheet total. Moreover, the REIT must distribute at least 90% of its annual profits to shareholders as dividends.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

Yes. If a transaction has been given a legal form that does not correspond with its actual nature or meaning or if the legal form of the transaction does not correspond to the actual behaviour of the taxpayer, the GAAR or SAARs may be applied and taxes can be reassessed as if the actual form of the transaction had been used. Case law on the application of the GAAR and SAARs has, in several instances, covered scenarios where a series of transactions have been subject to re-characterisation, especially where no adequate commercial reasons have been shown for the transaction.

9.2 Is there a requirement to make special disclosure of avoidance schemes or transactions that meet hallmarks associated with cross-border tax planning?

Yes. Cross-border arrangements are reportable if they fall within the so-called "hallmarks". These include, but are not limited to, arrangements (i) where the taxpayer, or a participant in the arrangement, enters into a confidentiality agreement regarding not disclosing how the arrangement could create a tax advantage, (ii) that are based on standardised documents and structures that do not require substantial customisation for their implementation, or (iii) that enable the conversion of income to capital, assuming, in all cases, that the tax benefit is deemed the primary or one of the primary benefits of the arrangement. The Finnish disclosure regime applies without limitations to arrangements executed on or after 1 July 2020, but also to a certain extent to arrangements that have been executed on or after 25 June 2018.

9.3 Does your jurisdiction have rules that target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

There are no specific rules. However, the Finnish Penal Code includes provisions regarding tax crimes that are also applicable to parties promoting or facilitating tax crime. Mere tax avoidance does not constitute a tax crime as such.

9.4 Does your jurisdiction encourage "co-operative compliance" and, if so, does this provide procedural benefits only or result in a reduction of tax?

The Finnish Tax Administration promotes the use of so-called "preliminary discussions" for the clients of the Large Taxpayers' Office, i.e. mainly companies belonging to a larger group. Preliminary discussions should be carried out prior to any transaction, and the advice given in such discussions is generally binding on the tax authorities. The preliminary discussions do not result in a reduction of tax, but may provide indirect procedural benefits through the "protection of trust" principle. However, if the subject matter is complex or subject to interpretation, there is a lack of case law, or the parties disagree with respect to the tax treatment of the transaction, the taxpayer is normally, in the preliminary discussions, advised to apply for an advance tax ruling from the Finnish Tax Administration.

9.5 Are there rules requiring special disclosure where a company is taking a position on a tax issue that is uncertain (open to dispute from a technical perspective)?

No such rules currently exist.

10 BEPS, Tax Competition and the Digital Economy

10.1 Has your jurisdiction implemented the OECD's recommendations that came out of the BEPS project?

Yes. An updated provision regarding the contents of transfer pricing documentation and Country-by-Country Reporting ("CBCR") requirements (see question 10.3) have been introduced. Finland has also implemented new legislation on mandatory disclosure requirements (see question 9.2) and the tax treatment of cross-border hybrid mismatch arrangements. Prior to the introduction of the base erosion and profit shifting ("BEPS") project, Finland had already introduced interest deduction limitation rules similar to those in BEPS Action 4 (see questions 3.4, 3.5 and 3.6).

10.2 Has your jurisdiction adopted any legislation to tackle BEPS that goes beyond the OECD's recommendations?

In general, no. However, Finland is obligated to implement the EU Directives, some of which may go beyond the OECD's recommendations.

10.3 Does your jurisdiction support information obtained under Country-by-Country Reporting (CBCR) being made available to the public?

At least at the moment, no.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

No such regimes currently exist.

10.5 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

No, it has not.

Niklas Thibblin is the Managing Partner of Waselius & Wist. Niklas has over 20 years of experience in domestic and cross-border tax matters in complex high-profile cases. Niklas has, for instance, advised in numerous domestic and multijurisdictional group restructurings and transactions, as well as tax filings relating to such arrangements. Niklas regularly acts as counsel in proceedings before the Finnish tax authorities and administrative courts, including the Supreme Administrative Court.
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