



Finland



The Reform of Finnish Corporate Taxation

A bill aimed at reforming Finnish corporate taxation is forthcoming in October 2007. The reform seeks to harmonise corporate tax legislation with the new Finnish Companies Act. It also aims to minimise the connection between the calculation of taxable income from the calculation of accounting profits. A separate bill is also forthcoming this autumn concerning the taxation of shareholders in controlled foreign companies that takes into consideration the European Court of Justice decision in *Cadbury-Schweppes* (C-196/04). Both acts will likely come into force in the beginning of 2008.

Since the reform of Finnish Companies Act in September 2006 there has been inconsistency between the Companies Act and taxation. There is an urgent need for clarification especially with respect to the tax treatment of different forms of dividends distribution and capital repayments to shareholders. The forthcoming tax proposals will most probably include provisions related to the concepts of preferential and hidden dividend distributions.

The other important area of harmonisation concerns corporate reorganizations. The existing difference between the Companies Act and business taxation with respect to mergers, full or partial de-mergers, transfers of business activity and exchange of shares makes the planning of these transactions complicated. The differences also make it a delicate matter to realize taxable income even if execution of the transaction was intended to be tax neutral. There is an urgent need to provide the same possibilities for corporate reorganizations in tax legislation as there exists in the Companies Act.

Also the conflict between IFRS regulations and Finnish taxation should be resolved in the tax reform. In Finland the connection between bookkeeping and taxation has always been strong. With the IFRS regulations it becomes necessary to evaluate the functionality of the connection, since the main valua-

tion principle of IFRS regulations is fair market value, whereas Finnish taxation is based on historical acquisition cost and realization principles.

The starting point of not including the unrealized appreciation or depreciation in the taxable base will most probably remain. The Finnish Ministry of Finance is of the view that corporations should not be allowed to distribute tax exempt such assets that have accrued due to unrealized appreciations.

The European Court of Justice decision in *Cadbury-Schweppes* (C-196/04) has forced Finland, like many European countries, to re-think legislation concerning the taxation of shareholders in controlled foreign companies. According to the ECJ's decision, Articles 43 EC and 48 EC preclude the inclusion in the tax base of a resident company established in a Member State of profits made by a controlled foreign company in another Member State, unless such inclusion relates only to wholly artificial arrangements intended to escape the national tax normally payable. The Finnish National Board of Taxes has already given application directions based on the ECJ's decision that should be applied until the new legislation replaces the directions. The reform of the controlled foreign company legislation will significantly increase the international tax planning opportunities for Finnish companies.

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