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Tax Procedures in Finland

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TAB 1

Panel Participants

Panel Participants

Judge Peter J. Panuthos - Special Trial Judge in the United States Tax Court
– Panel Chairperson

Terttu Lepaus - Chairwoman, Board of Adjustment

Graduated from the University of Helsinki in 1983 with a Master of Laws. Since graduation worked in the Finnish Tax Administration as a tax specialist and a head of department, excluding a year during 1987 -1988 when she worked as a judge in Pirkkala general court. For the past five years worked in the Board of Adjustment as a leading chairwoman of the Board.

Vesa-Pekka Nuotio - Justice of the Finnish Supreme Administrative Court

Justice at the Finnish Supreme Administrative Court – that is the highest tier court in administrative matters in Finland. Doctorate in financial law. Doctoral thesis concerned the way tax losses are carried forward in the Finnish income tax system including also some comparison between various jurisdictions.

Career in 1989 as a lawyer trainee in a local civil court, the lowest tier civil court. Conscription service in the Finnish armed forces. Presenting official in the Administrative Court of Uusimaa (currently called the "Administrative Court of Helsinki"). In the beginning of 1992 – the regional administrative court or lower tier administrative court – presented mainly tax cases (income taxation, prepayments, gift and inheritance tax). Moved to private sector in 1996 as a tax consultant at Coopers & Lybrand until February 2014. As a consultant, Justice Nuotio assisted Finnish and foreign companies, which ranged from large multinationals (for instance ExxonMobil) to family owned businesses. The cases concerned mainly Finnish and international corporate taxation. In February 2014, became a Justice, first a temporary one, then became a permanent one in the beginning of 2016. Worked in the chamber into which all the tax cases have been concentrated. Approximately half of working time is allocated to tax cases and the other half to cases of other types.

Juhana Niemi - Judge in the Administrative Court of Hameenlinna

Judge in the Administrative Court of Hameenlinna, which is the regional court of first instance in administrative matters. He focuses on tax cases concerning Finnish Income Tax Law, European Union Tax Law, Tax Treaties and Transfer Pricing. Prior to becoming a Judge he served as a Reporting Official in the Supreme Administrative Court of Helsinki (2007-2012) where he gained expertise in European Union VAT law. He also served as Superintendent in the Finnish Migration Service and Tax Secretary in the Helsinki Area Tax Office. He has a Masters in Law degree from the University of Lapland in 2005.

TAB 2

Value Added Tax (VERO-SKATT)

VERO SKATT

Value added tax

Value added tax (VAT) is a consumption tax that the seller of goods or services must add to the price. Sellers collect VAT from their customers and pay it on to the State. Liability to pay VAT concerns anyone who sells goods, services, rents out goods, or is engaged in similar operations in the conduct of business. Similarly, the primary production activity of farmers and forest owners is VAT liable.

VAT must be collected from the buyer each time a good or service is sold. Sellers add the VAT to the price they charge for goods or services. Then they pay the VAT they receive to the Tax Administration. The VAT included in the price of goods and services is deductible for a VAT taxpayer who buys it for the purpose of taxable business. This requires that both the buyer and the seller are VAT taxpayers. Ultimately, the consumers pay the VAT; and the final price that they pay only contains a single debiting of VAT.

Registering for VAT

A person or company that conducts VAT taxable business must register for VAT with a notification in the Business Information System (https://www.ytj.fi/en/index.html) (ytj.fi). Registration is not mandatory if turnover for the accounting period (12 months) is €10,000 or less. However, businesses or corporate entities with a lower turnover may seek registration voluntarily if they conduct business.

If the length of the accounting period is different from 12 months, the turnover value must be adjusted so that it reflects a 12-month period (multiply the turnover by 12 and divide the result by the actual quantity of full months within the accounting period).

Read more about VAT registration for foreigners in Finland (/en-US/content/34849/8223)

Operations outside VAT taxation

A number of activities are listed in the VAT Act as non-VAT taxable. If a business does not sell other goods or provide other services than those listed in the VAT Act, it cannot register for VAT, and consequently, its non-VAT taxable operations do not entitle it to VAT deductions on purchases. Operations outside VAT taxation include i.a.:

- Selling real estate and dwellings and offering them for rent
- healthcare and medical services, social caregiving activities
- training and educational services listed in the VAT Act
- financial and insurance services
- fees paid for copyright and performances listed in the VAT Act
- general postal services

However, the owner or holder of immovable property may submit an application for VAT registration on the basis of offering the property or part of it for rent if it is in continuous use that serves a VAT-taxable activity.

VAT exemption of operations for promoting the public good

If an association or foundation promotes the public good, it is not treated as liable to pay VAT for that activity or other activities it may pursue that are considered exempt: no VAT is added to the prices of goods and services. In this case, the association or foundation cannot deduct the VAT included in its purchases.

However, a corporate body promoting the public good is liable to pay VAT on the following specific activities:

- Anything that is treated as a taxable business operation for the purposes of income tax. Small-scale operations (turnover for the accounting period max €10,000) fall nevertheless outside VAT taxation.
- Own use of restaurant and catering services.
- Own use of real estate management services.

A corporate body promoting the public good may opt for registering for VAT although they do not conduct taxable business. However, the activity that it operates must in that case be a business operation within the meaning of VAT Act. It must be possible to differentiate between the activity for which VAT registration is sought and the body's other activities. This way, its application for VAT registration will not concern the body's other, separate activities. An example of an activity for which VAT registration may separately be sought is the ownership of forest land and the carrying out of business relating to it.

Reporting and paying VAT

As a VAT taxpayer, you must submit a VAT return on your own initiative and pay it, in accordance with the tax period you or your company has. You can report and pay VAT in MyTax.

Log in to My Tax (/mytax)

Small-scale operations and VAT relief

If the VAT taxable operation is considered small-scale – i.e. the turnover for the accounting period (12 months) is less than €30,000 – you may be eligible to relief for the VAT.

Amount of VAT

If you sell a product, you can calculate the VAT to be added by multiplying its net price by the currently valid VAT rate for that product and dividing the result by 100. The base for VAT is the net price to be charged from the buyer.

VAT rates on goods and services

24%	the general rate: most goods and services
14%	a reduced rate: food, animal feed, restaurant and catering services
10%	a reduced rate: books, pharmaceutical products, physical exercise services, film showings, entrance to cultural and entertainment events, passenger transport services, accommodation services, operations relating to TV and public broadcasting against a fee

The buyer must be given a receipt or invoice

Sellers registered for VAT must give an invoice to their buyers. It must contain the required VAT details listed in VAT Act.

To have the right to deduct input VAT, the buyer must get and keep the invoice, receipt or other similar documentation from the seller.

Read more about VAT details to set out on sales invoices (/en-US/content/15591/8223)

Termination of VAT taxable operations

If you cease to operate your VAT taxable trade or business, please file a Notice of termination (ytj.fi (https://www.ytj.fi/en/index.html)) without delay.

e-File

- Verification of VAT-numbers (/en-US/content/15577/8223)

Forms

- Self-assessed tax return (4001e) (/en-US/content/10922/8151)
- All forms (/Precise_information/Forms)

Page last updated 5/10/2017

TAB 3

Tax Administration and Appeals (VERO-SKATT)

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VERO SKATT

Tax administration and appeals

Validity: **In force until further notice**

Appeal against tax assessment decision, income taxation

Appeal authority

If you disagree with a tax assessment decision, you can appeal the decision. The authority that works with appeals is called the Board of Adjustment (oikaisulautakunta; rättelsenämnd).

Period of appeal

All taxpayers may appeal the decisions. Furthermore, anyone whose own tax may be directly affected and anyone paying tax for someone else has the right to appeal.
Appeals to the Board and any further appeals of the type described below should be made within five (5) years of the 1st of January of the year after the calendar year when the tax assessment was made. Example: To lodge an appeal regarding any 2010 taxes, the period of appeal will close December 31, 2016.

Contents of the appeal

Make your appeal request in writing. It should show your name and domicile, and full details as to what part of the tax decision you want to have reviewed and why.

Enclose all documentation to which you refer, unless it has already been delivered to the tax authority.

Delivering the request

Appeals should arrive at the tax office within the above time limit. Appeals can be delivered to any unit of Verohallinto, the Finnish Tax Administration. If you use the postal service, send documents on time, so that they indeed are delivered no later than on the final day of the period of appeal.

Further appeals

If you disagree with the reviewed decision by the Board of Adjustment, you can appeal to the Administrative Court.

Impact of pending appeals on the obligation to pay tax

Taxes should be paid on their original due dates. No exception is made simply because the taxpayer has lodged an appeal against the tax decision. However, if an appeal is pending, the tax authority can issue an injunction order to prevent or postpone collection and recovery action against the taxpayer.

Appeal against employers´ contributions

Letter of appeal to the unit of the Tax Administration that issued the official decision

If employers´ contribution taxes are concerned, the appeal authority to deal with the official decision cannot be the Administrative Court until the taxpayer has first requested that the official decision be changed by the unit of the Tax Administration that issued it.

That unit of the Tax Administration will examine the request and take action to change it if it turns out that an error was made. The unit can change its official decision because of the taxpayer´s appeal, because of a complaint, or because the error has otherwise become apparent. Appeals should be made within five (5) years of 1st of January of the year after the calendar year when the official decision was made.

Appeal to the Administrative Court

If you disagree with the reviewed decision, and want to make a further appeal, the appeal authority will be the Administrative Court of the regional jurisdiction of the taxpayer of employers´ contribution taxes.

Period of appeal

Appeals to the Administrative Court should be made within five (5) years of the 1st of January of the year after the calendar year when the original official decision on employers´ contributions was made.

Contents of the further appeal

Make your appeal request in writing. It should show complete details as to what part of the revised decision you want to have changed and why. The request must be signed personally, and it should include the appellant´s or any other signatory´s occupation/profession, name of tax domicile, and postal address. Enclose the revised decision to which you refer, and any other relevant documentation.

Delivering the request

Appeals should arrive within the above time limit. Appeals can be delivered to the unit of the Finnish Tax Administration that made the decision, to another unit, or to the Administrative Court. You can use the postal service, and if your appeal is going to the Administrative Court, you can submit it electronically. For postal addresses and e-mails, go to www.oikeus.fi > In English > Contact Info.

Send documents on time, so that they indeed are delivered no later than on the final day of the period of appeal.

Appeal to the Supreme Administrative Court (Finnis: Korkein hallinto-oikeus; Swedish: Högsta förvaltningsdomstolen)

If you disagree with the ruling of the Administrative Court, the appeal authority will be the Supreme Administrative Court, on the condition that you have received permission from this court. Period of appeal is 60 days of the date when information was received of the ruling against which you want to appeal.

Impact of pending appeals

Taxpayers are expected to act as instructed by the original tax decision of the Tax Administration unit, regardless of a pending appeal lodged in various instances. Therefore, until the date when information is received on the outcome of the appeal, no change on the original tax decision is effected.

Appeal against VAT

Letter of appeal to the unit of the Tax Administration that issued the VAT decision

The unit can change its official decision because of the taxpayer´s appeal, because of a complaint, or because the error has otherwise become apparent. Primarily, that unit of the Tax Administration will examine the request and take action to change it if it turns out that an error was made.

If the error is thus corrected, the processing of the taxpayer-initiated appeal will simultaneously be closed. If the relevant Tax Administration unit only accepts the taxpayer´s request partly, the unit will send the request to Helsinki Administrative Court for further processing, to examine the part of the taxpayer´s request that was not accepted.

Appeals against a VAT decision should be made within three (3) years of the closing of the relevant accounting period.

Appeal to Helsinki Administrative Court

If you disagree with the reviewed decision, and want to make a further appeal, the appeal authority will be the Administrative Court of Helsinki.

Period of appeal

Appeals against a VAT decision should be made within three (3) years of the closing of the relevant accounting period, and if the appeal concerns more than one accounting period, the closing date of the most recent period will determine the period of appeal. Nevertheless, usually the minimum period of appeal is 60 days of the date when information was received of the decision.

Contents of the appeal

Make your appeal request in writing. It should show complete details as to what part of the decision you want to have changed and why.

Enclose the decision to which you refer, and any other relevant documentation.

Delivering the request

Appeals should arrive within the above time limit. Appeals should be delivered to the unit of the Finnish Tax Administration that made the decision, or to another unit. You can use the postal service. Send documents on time, so that they indeed are delivered no later than on the final day of the period of appeal.

Appeal to the Supreme Administrative Court (Finnish: Korkein hallinto-

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oikeus; Swedish: Högsta förvaltningsdomstolen)

If you disagree with the ruling of the Administrative Court, the appeal authority will be the Supreme Administrative Court, on the condition that you have received permission from this court. Period of appeal is 60 days of the date when information was received of the ruling against which you want to appeal.

Impact of pending appeals

Taxpayers are expected to act as instructed by the original VAT decision of the Tax Administration unit, regardless of a pending appeal lodged in various instances. Therefore, until the date when information is received on the outcome of the appeal, no change on the original tax decision is effected.

Last Update: 12/30/2010

TAB 4

Judicial Administration in the Administrative Court (Oikeus)

Judicial Procedure in the Administrative Court

Home page

Print the entire brochure

Judicial Procedure in the Administrative Court

WHAT IS AN ADMINISTRATIVE COURT?

The Finnish courts are divided into two main groups: general courts and administrative courts. Administrative courts comprise the Supreme Administrative Court and six administrative courts: the Administrative Courts of Helsinki, Hämeenlinna, Eastern Finland, Northern Finland, Turku and Vaasa. The Åland Islands have their own Administrative Court.

Each administrative court administers justice in administrative matters in the area of one or several provinces. However, certain types of cases have been centralised to be dealt with by one administrative court only. For example matters of value-added tax and asylum are dealt with by the Administrative Court of Helsinki and matters under the Environmental Protection Act and the Water Act by the Administrative Court of Vaasa.

An administrative court hears appeals of individuals and corporations against decisions of the authorities in administrative matters. The appeals lodged with administrative courts concern among other things:

- taxation;
- social welfare and health care, such as decisions relating to subsistence support, support for the disabled, child welfare and mental health;
- matters relating to the environment, construction and land use, such as decisions on environmental and building permits;
- matters relating to municipal autonomy;
- decisions of the authorities on carrying on a trade or business;
- various charges imposed by the authorities, such as parking tickets, public transport penalty fares and waste charges.

In several matters, the decision of an authority maybe appealed directly to the administrative court. However, in taxation matters, in matters concerning certain charges and remunerations and in a number of other matters a party who is dissatisfied with the decision of an authority must first submit a request for rectification to the competent authority. A request for rectification is not used in matters that are of particular significance with regard to the legal protection of the party and in which it is important submit the matter to a court of justice for decision as soon as possible. Such matters are, for example, appeals against decisions to order payment of a conditional fine, enforced compliance or enforced suspension as well as trade permit matters. When a request for rectification is used as the first stage of appeal, only the decision given to the request for rectification may be appealed to the administrative court.

A translation of the Finnish Administrative Judicial Procedure Act (586/1996) is available in the database of Finnish acts and decrees at http://www.finlex.fi

Updated on January 1, 2016

More about the subject

Suomeksi

På svenska

» Rättegång i förvaltningsdomstolen (01.01.2016, Publication)

TAB 5

The Tax Disputes and Litigation Review - Simon Whitehead (Chapter 7)

(Editor)

The Tax Disputes and Litigation Review

Second Edition

Editor
Simon Whitehead

Law Business Research

Chapter 7

FINLAND

Ossi Haapaniemi, Lauri Lehmusoja and Meeri Tauriainen[1]

I INTRODUCTION

The tax legislation in Finland is generally not very complex or sophisticated in comparison with many other OECD and EU Member States, and many matters are regulated in very general terms. Tax litigation in Finland is in most cases carried out completely through a written process, which limits the associated costs to some extent, but which may also have an impact on how thoroughly all aspects of a case are taken into consideration by the courts. The resources of the courts and authorities that handle tax dispute matters are limited, leading to quite long processing times.[2] These factors, when combined, often lead to complex and lengthy tax litigation and prolonged uncertainty, even with regard to matters having a wider relevance in the tax system.[3]

Generally, the Finnish Tax Administration is relatively open to discussion and argumentation during the processing of tax returns or during tax audits. Various forms of tax litigation dominate in the resolution of tax disputes after a tax assessment has been made, although corrections of the most apparent mistakes may be agreed with the Tax Administration, even after the tax assessment, without the need to commence a proper tax process. Resolving tax matters through negotiations with the Tax Administration

1 Ossi Haapaniemi is a partner and Lauri Lehmusoja and Meeri Tauriainen are senior associates at Hannes Snellman Attorneys Ltd.

2 The long tax dispute processes and the prolonged uncertainty may, in turn, cause unnecessary costs and practical complications for taxpayers.

3 Themes being disputed in currently pending or recent tax litigation include the applicability of the participation exemption concerning sales of subsidiary shares, the potential applicability of anti-avoidance provisions (e.g., to debt push-downs), and the deductibility of interest in the thin capitalisation context or with respect to hybrid instruments.

may be more difficult in cases concerning, for example, jurisdictions perceived as tax havens or suspected tax avoidance arrangements.

II COMMENCING DISPUTES

The most common way to initiate an income tax dispute in Finland is an appeal against a tax assessment decision to the Tax Rectification Board.

The statute of limitations governing the taxpayer's right of appeal in tax matters in Finland is generally five years from the beginning of the calendar year following the tax assessment. For example, in income tax matters, the tax assessment typically takes place during the calendar year following the tax year in question, and the statute of limitations is hence calculated from the beginning of the second calendar year following the tax year in question. Thus, income taxation for the tax year 2014 is in most cases assessed during 2015, and the five years' statute of limitations is calculated from 1 January 2016; therefore, in most cases income tax claims concerning the tax year 2014 must be filed by 31 December 2020.

The timing of tax assessments varies by type of taxation; for example, withholding taxes are deemed to be assessed immediately upon withholding. In practice, this leads to a statute of limitations period that is one year shorter than applies in regular income taxation. In contrast, an appeal in a VAT matter must be filed within three years, calculated from the end of the relevant financial period.

The statutes of limitation discussed above are generally applicable in all stages of the appeal process. However, with respect to lengthy tax processes, during which the five or three-year time limits may be exceeded at some point during the process, a taxpayer has a right to appeal a tax assessment decision or a decision given in an appeal matter within 60 days[4] of receiving notice of the decision, irrespective of whether the five or three-year time limits have been exceeded.[5]

In cases where the tax recipients (the state, local municipalities, etc., in practice typically represented by the Tax Recipients' Legal Services Unit) deem that a tax assessment decision has been too favourable towards the taxpayer, it is possible for the tax recipients to appeal against the tax assessment. The statute of limitations applicable in such cases is one year.[6]

Furthermore, it is also possible that the Tax Administration will seek to reassess a taxpayer's taxation on its own initiative. The time limit governing this right depends on the nature of the matter (at a maximum, five years, or three years concerning VAT), and is calculated similarly to the statute of limitations rules applicable to taxpayers. The maximum time limit is applicable in cases where the taxpayer has failed to properly file a tax return, or if the tax return or other document filed with the Tax Administration has been false, incomplete or misleading. The time limit is two years in cases where there has

4 Within 30 days in some specific matters (e.g., VAT registration matters).

5 Tax recipients also have a similar right of appeal, with slight differences in the calculation of the time limit.

6 Calculated similarly to the statute of limitations rules applicable in relation to the taxpayers.

been a calculation or typing error by the Tax Administration, or the incorrect taxation has been based on incorrect or incomplete information received from third parties (such as tax reporting by an employer concerning employees or by a bank concerning its customers). In other situations, the statute of limitations for the correction of a taxpayer's taxation to its detriment is one year. Finally, the maximum time limit of five years also applies when the Tax Administration has noticed an error to the taxpayer's detriment and seeks to carry out a reassessment to the benefit of the taxpayer.

In cases where a taxpayer wishes to amend or correct a tax return already filed at the Tax Administration, this is possible even after the tax return filing deadline as long as the final tax assessment for the year in question has not been made. For individuals and corporations having the calendar year as their fiscal year, the tax return filing deadlines are typically in April or May following the tax year in question. Final tax assessments are normally made by the end of October following the tax year in question.

In VAT matters, VAT returns (periodic tax returns) are submitted using an electronic VAT and employer payroll withholding and reporting system. In this system, the taxpayer may file a periodic tax return and browse the tax account transactions free of charge. In addition, corrections to the periodic tax returns and refund applications are made using the same system. The Tax Administration issues a separate appealable decision on the refund application only in the event that it rejects the periodic tax return partly or entirely.

Appeals regarding the refund of VAT are addressed to an administrative court. The Tax Administration, however, processes all appeals as rectification matters at the first stage. In the event that the Tax Administration accepts the claim, the appeal to the administrative court is considered annulled. If the Tax Administration rejects the claim entirely or partly, the matter is further processed as an appeal matter in the administrative court.

As an alternative to appealing against tax assessments that have already been made, it is in many cases possible to obtain certainty concerning a tax question that is open to interpretation by applying for a binding advance ruling from the Central Tax Board or from the Tax Administration. An appeal against an advance ruling by the Central Tax Board may be made to the Supreme Administrative Court, and an appeal against an advance ruling by the Tax Administration may be made to an administrative court. The time limit for filing the appeal is 30 days.

An advance ruling application may be rejected, in which case no advance ruling is issued. In fact, a considerable percentage of advance ruling applications are rejected by the Central Tax Board and the Tax Administration. Furthermore, a decision by the Central Tax Board or the Tax Administration not to issue a ruling in a matter cannot be appealed against. In the case of the Central Tax Board especially, applications with unclear facts or applications concerning arrangements with potential tax avoidance elements are typically rejected. However, a significant number of completely *bona fide* applications also seem to be rejected in practice.

In matters concerning taxes that have been assessed contrary to EU principles or rules, it has been somewhat unclear whether an administrative litigation procedure in an administrative court or a process in civil courts (to claim damages from the state) could be available in cases where it is not possible to reclaim such taxes in a normal tax process (e.g., due to the statute of limitation). In its recent ruling, the Supreme Court of Finland

stated that it was indeed possible to claim damages from the state of Finland in a tax matter concerning conformity of the Finnish car taxation rules with the EU principles and rules in a normal civil process. On the basis of recent Supreme Administrative Court practice concerning non-tax matters, an administrative litigation procedure would also seem to have become possible, but in a recent tax-related matter this possibility was rejected, at least under the circumstances of that particular case. Further matters concerning the same topic are still pending in the Supreme Administrative Court. Hence, there is not absolute clarity yet concerning the applicability of the administrative litigation procedure in a tax context. The main advantage of the civil process to claim damages and (potentially) the administrative litigation procedure would be that the applicable statute of limitations might be extended to a maximum of 10 years (or in practice even longer, depending on how this is defined) instead of the five years normally applicable in tax matters.[7] A fully fledged civil process to claim damages in a tax matter may be fairly complicated, burdensome and costly, and in comparison the administrative litigation procedure, if deemed applicable, is likely to be much more straightforward and cost-efficient.

In cases of unlawful actions by civil servants, it is possible for a taxpayer to file a complaint to the Chancellor of Justice of the Government or to the Parliamentary Ombudsman. The Chancellor of Justice and the Ombudsman typically inform the authority of their view on the matter, and may recommend that an erroneous decision is amended. They do not have the power to overturn administrative decisions, and a complaint does not lead to a court process.

III THE COURTS AND TRIBUNALS

In most tax matters, tax assessments may in the first instance be appealed to the Tax Rectification Board. The Tax Rectification Board is a unit within the organisation of the Tax Administration, but it has an independent status (it is, for example, not bound by the Tax Administration's guidelines). The reporting official undertaking the background work for the Board is a Tax Administration official; however, as regards the actual Board composition, there are also members representing taxpayers' organisations and local municipalities in addition to members representing the Tax Administration. The Tax Rectification Board makes its decisions through a written process.[8] The length of the process in the Tax Rectification Board varies greatly, being typically around 12 to 18 months.[9] A clear majority of tax disputes are already resolved at the Tax Rectification Board level.

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7 The statute of limitations is three years from the point when the taxpayer knew or should have known of the illegality of the tax assessment (however, a maximum of 10 years).

8 Theoretically, it would also be allowable for the Board to organise oral hearings, but in practice they remain extremely rare.

9 From May to October, many of the reporting officials of the Board concentrate on their ordinary taxation and tax return processing duties in the Tax Administration, leaving less urgent appeal matters aside; hence, the Tax Rectification Board is less active during that time of the year and

Appeals against decisions by the Tax Rectification Board may be made to an administrative court. However, in certain tax matters (e.g., those concerning VAT and transfer taxation), appeals against tax assessments by the Tax Administration are not made to the Tax Rectification Board. In such matters, appeals may instead be made directly to the administrative court. Like general courts, administrative courts are organisationally completely independent, and their decisions are made by independent professional judges. Matters are typically resolved in a written process, although the court may decide to hold oral proceedings. The length of the process varies, but is on average approximately one year.

The highest court in tax matters in Finland is the Supreme Administrative Court. Leave to appeal is needed for appeals to the Supreme Administrative Court on administrative court decisions in most tax matters. Leave to appeal may be granted on the basis of the case's potential importance as a precedent, due to a manifest error that has been made in the matter, or based on weighty economic or other reasons. Leave to appeal is granted in around 20 per cent of cases, most often on the basis of the precedent value of the matter. Tax matters in the Supreme Administrative Court are resolved by written process in most cases. The most important decisions by the Supreme Administrative Court are published annually in the Court's yearbook.[10] In addition, some other decisions are published as short summaries. The average processing time in tax matters in the Supreme Administrative Court is approximately one year, but in some cases, the processing times have been significantly longer.

In addition, there is also an advance ruling forum that makes significant tax decisions in Finland. The Central Tax Board is a specific independent body organised within the Tax Administration that may issue advance tax rulings in tax matters having a significant precedent value.[11] Many of the advance rulings are also published. The Tax Administration, taxpayers' organisations and tax recipients are represented among the members of the Board. Appeals against advance rulings by the Central Tax Board may be made directly to the Supreme Administrative Court; such appeals are treated as urgent, and no leave to appeal is needed. It should be noted that certain areas of taxation, such as inheritance and gift taxation and transfer taxation, are excluded from the jurisdiction of the Central Tax Board.

IV PENALTIES AND REMEDIES

In income tax matters, the administrative tax penalties may reach a maximum of 30 per cent of the unreported income. In the most common corporate income tax matters relating to a tax law interpretation issue or a taxpayer's error, the typical penalty levels seem to range between 5 and 10 per cent of the unreported or erroneously reported income.

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makes most of its decisions during the months from November to April. The cyclical nature of the Board's activity may increase the variation in the processing times of the appeals.

10 The name of the taxpayer is not public information in tax matters, hence the published cases are anonymous.

11 The Central Tax Board may also issue an advance ruling based on other weighty reasons.

According to the law, the application of percentage-based tax penalties in income tax matters should in principle require wilful conduct by the taxpayer aimed at evading taxes, or gross negligence by it. However, the Tax Administration seems to consider the otherwise applicable tax penalties as very small and not appropriate for corporate taxpayers (currently they are fixed penalties of €150 or €800). Hence, the legal requirements for percentage-based tax penalties have been extended greatly in the Finnish tax practice, and the Tax Administration frequently applies percentage-based penalties in tax disputes concerning large corporate taxpayers.

In VAT and payroll withholding-related disputes, percentage-based penalties are also available in cases not involving wilful conduct or gross negligence, and in cases where the taxpayer has acted wilfully or in a grossly negligent manner, the penalties may be up to 100 per cent of the amount of the unpaid tax. Furthermore, in cases where the failure to carry out due reporting was for the purpose of tax evasion, there is a minimum penalty of 50 per cent of the tax amount. In such cases, the maximum penalty is 200 per cent of the tax amount.

Certain significant tax penalties may also be payable regardless of whether there are any unpaid taxes claimed by the Tax Administration. For example, a failure to present due transfer pricing documentation in the given time frame may be sanctioned with a tax penalty amounting to a maximum of €25,000.

In addition to actual tax penalties, penalty interest is also typically payable on unpaid tax amounts. For example, in income taxation matters, the general late payment interest is currently 7.5 per cent per annum. Furthermore, in the electronic VAT and employer payroll withholding and reporting system, a penalty interest exists that is payable for non-reported taxes. The interest rate of this penalty interest is currently 15 per cent per annum.

In cases of tax evasion, criminal sanctions may even be imposed on the taxpayer. The sanction for aggravated tax fraud, which is the most serious form of tax-related crime according to the Finnish Penal Code, is imprisonment for a term of at least four months and a maximum of four years. For non-aggravated tax fraud, the sanctions range from fines to imprisonment for a maximum term of two years, and minor tax offences are typically sanctioned with fines. The threshold for aggravated tax fraud is low in Finland. In court practice, monetary interests in the range of some tens of thousands of euros have been considered as sufficient for a case of tax evasion to qualify as aggravated tax fraud.

The statute of limitations applicable in the criminal process may be longer than the five-year limit applicable generally in tax matters. Aggravated tax fraud, for instance, becomes time-barred after 10 years. In criminal matters, a taxpayer found guilty of a tax crime may be obliged to pay damages to the tax recipients in respect of all the years that are not time-barred according to the statute of limitations applicable in criminal proceedings. Hence, there may in practice be an increased risk of criminal proceedings in cases where there have been considerable monetary interests that are already time-barred according to the statute of limitations applicable in the tax process, but that are not yet time-barred according to the statute of limitations applicable in criminal proceedings.

V TAX CLAIMS

i Recovering overpaid tax

In the event that a taxpayer's tax withholdings or tax prepayments exceed the final amount of tax payable for the tax year in question, the overpaid income tax is, as a starting point, refunded to the taxpayer as a tax refund approximately one year after the end of the tax year or financial period in question. Upon a specific application, a refund of overpaid tax prepayments may be possible even prior to the regular tax refund payment date.

A separate refund application should also be filed to the Tax Administration in the event that a non-resident taxpayer has suffered Finnish withholding taxes that exceed the maximum level allowed under an applicable tax treaty and EU principles. Similar refund processes also exist concerning, for example, transfer taxation.

Overpaid VAT may be refunded automatically to the taxpayer from the electronic VAT and employer payroll withholding and reporting system based on the periodic tax return filed by the taxpayer. The Tax Administration issues a separate appealable decision on the refund application only in the event that it rejects the periodic tax return partially or entirely.

ii Challenging administrative decisions

In Finland, argument in appeals concerning administrative decisions in tax matters typically concentrates to a relatively large degree on the interpretation of the technical tax rules immediately applicable in the case at hand. For example, successful argument based on the disputed constitutionality of a certain tax rule or interpretation is typically difficult, as there is no separate constitutional court, and practice concerning constitutionality reviews in tax matters is scarce.

There is somewhat more practice concerning the protection of the legitimate expectations of the taxpayer in cases where the taxpayer has in good faith relied on an established tax practice, or advice or guidelines issued by the Tax Administration. If the Tax Administration in such cases seeks to impose a tax in a way that conflicts with its earlier advice or an established practice, a claim based on the protection of legitimate expectations may be successful, even if the later interpretation of the applicable tax rules were considered to be correct by the court deciding on the matter.

iii Claimants

In addition to the actual taxpayer, an appeal regarding income taxation may also be made by another party whose own taxation is directly affected by the assessment or decision in question. For the right of appeal to arise, there must be an actual tax impact in the specific case at hand. For example, the spouse of an individual taxpayer may in some cases have a right to appeal on this basis, and similar situations may also arise concerning partnerships and bankruptcy estates. In contrast, such situations are rare in the Finnish 'group contribution'-based group taxation regime.

Regarding VAT, a person subject to VAT may file appeals in the tax process with respect to VAT matters reported by him or her (i.e., typically the seller concerning the output VAT on sales and the buyer concerning the input VAT on purchases). In a tax process, the buyer may not typically claim back from the state the possible excess VAT

charged by the seller. However, the buyer may be able to claim back the unlawfully charged VAT from the other contracting party on the basis of the law of contracts. Furthermore, in the rare instances where the state has imposed VAT in violation of the VAT Directive, a non-VAT liable buyer could bring an action against the state and claim damages for the VAT that the buyer has been unable to deduct.

The Tax Administration may abstain from levying VAT otherwise chargeable (e.g., in connection to a tax audit) if the other party to the transaction issues a written notice stating that it will not pursue its legal right to claim a refund of the VAT in question. Only a notice given after the tax dispute has arisen is valid for this purpose; accordingly, the notice may not be given in advance.

The counterparty of a taxpayer in tax disputes is typically the Tax Recipients' Legal Services Unit, organised within the Tax Administration. The Unit is not bound by the decisions and guidelines of the Tax Administration, and has a right of appeal concerning tax assessment decisions and decisions in tax appeal matters on behalf of tax recipients.

VI COSTS

In Finland, there are generally very limited possibilities for taxpayers to obtain any compensation for their tax litigation costs, even in cases where the final decision in the matter is favourable to them.

The litigation costs of taxpayers are, as a rule, non-recoverable. Costs may, however, be ordered to be recovered by the authorities if the court deems it unjust that the taxpayer should have to bear them him or herself. The interpretation of this standard has been strict. In practice, costs may be recoverable typically in cases where the whole litigation has been caused by an obvious error of the Tax Administration or other authorities. Even in such cases, the recoverable costs are often limited to a nominal amount.

The right of the Tax Administration to recover its tax litigation costs from a taxpayer is almost theoretical, and may be applicable only in very exceptional situations (and only if the taxpayer's claim is deemed apparently frivolous).

Provisions governing the right to recover tax litigation costs are applicable only to those tax processes that are actual court proceedings (i.e., processes in administrative courts and in the Supreme Administrative Court). A process in the Tax Rectification Board is not considered to be litigation in the sense of these provisions, and it is therefore not possible to recover any litigation costs in respect of a process in the Tax Rectification Board, regardless of whether the process has been caused by an error by the authorities.

VII ALTERNATIVE DISPUTE RESOLUTION

Arbitration and mediation proceedings, and similar means of alternative dispute resolution, are currently not utilised in tax disputes concerning Finnish tax law.

VIII ANTI-AVOIDANCE

There is a general anti-avoidance provision in Finnish tax law. Under the anti-avoidance provision, the legal form of a transaction may be disregarded for tax purposes if it does

not correspond to the transaction's actual character and meaning. If the legal form of a transaction is disregarded under the anti-avoidance provision, tax will be assessed as if the transaction had been carried out using the correct form.[12] The anti-avoidance provision should be applicable only if it is obvious that an agreement has been entered into, or another action has been taken, for the purpose of avoiding the payment of tax, or if the tax reasons are the only or main purpose for entering into the agreement or taking the action.

In recent practice, there have been several cases in which the legal form of the transaction at hand has been disregarded simply through extensive and aggressive interpretation of the tax law and without reference to the anti-avoidance provision. However, the reasoning and argument of the Tax Administration or the court in such cases have in fact been based on general 'substance over form' thinking, an area that should generally be covered by the anti-avoidance provision.[13]

IX DOUBLE TAXATION TREATIES (AND EU-RELATED MATTERS)

Finland currently has comprehensive tax treaties concerning income and wealth taxes in force with over 70 jurisdictions.[14] One recent phenomenon in tax and court practice concerning the interpretation of these tax treaties is that some confusion seems to exist regarding what role the OECD Guidelines and commentaries should be given as sources in the interpretation process. In transfer pricing matters, for example, very far-reaching conclusions have been drawn from relatively vague statements in the OECD Guidelines, with very vague support from national sources of law. Based on the Guidelines, the Tax Administration has, for example, re-characterised debt as equity and equity as debt in contrast with earlier practice and without clear support from domestic tax legislation. In a recent administrative court decision such very broad interpretations were not accepted, but the case is still currently pending in the Supreme Administrative Court and it remains to be seen to what extent such interpretations will finally be accepted.

Regarding tax developments influenced by EU principles, in recent years there have been several significant decisions by the Court of Justice of the European Union (CJEU) concerning tax matters in Finland.

The Finnish courts have sometimes been quite reluctant to take into account the effect of EU principles in their decisions, or to adopt in their practice new rules arising from decisions by the CJEU. Partly because of this, the treatment of cross-border losses in the 'group contribution' group taxation model (in use in Finland and Sweden) is still

12 For example, in recent (unpublished) court practice, a debt push-down arrangement was regarded as tax avoidance, and the taxes were assessed based on the anti-avoidance provision.

13 For example, in recent tax practice, the question of whether shares in a Finnish subsidiary should be allocated to the permanent establishment located in Finland, as reported by the taxpayer, or to the head office in another country, was decided to the detriment of the taxpayer based on a reference to the actual economic substance and character of the structure. The anti-avoidance provision was not applied. In general, these cases may have involved a double dip on interest.

14 In addition to these, limited tax treaties are in force with a number of jurisdictions.

to some extent an open issue in Finland. Based on the CJEU ruling C-446/03 *Marks & Spencer*, and taking into account ruling C-231/05 *Oy AA*, a cross-border consolidation of final losses in certain situations has recently been accepted in Swedish court practice and later, through specific amendments, in the Swedish tax laws. In Finland, which has a very similar group taxation system, the interpretation seems to have been different, and a deductibility of final losses has so far been rejected in court practice.[15]

Another example of reluctance to take EU-related aspects into consideration in tax matters could be a 2002 decision of the Supreme Administrative Court to reject an appeal concerning a tax assessment where a Belgian subsidiary of a Finnish company had been treated as a controlled foreign corporation for Finnish tax purposes without referring the matter to the CJEU. Because of the CJEU ruling C-196/04 *Cadbury Schweppes*, which was issued later, the Supreme Administrative Court finally, in 2011, had to exceptionally annul its earlier decision.

In its ruling C-48/11 *A Oy*, the CJEU stated that the transfer of shares in a Finnish limited liability company by another Finnish company under an exchange of shares was not regarded as a taxable event, even though the recipient company was not resident in an EU Member State but in an EEA Member State (Norway). An interesting question concerning future developments could be whether a similar treatment could under some circumstances be extended even to third countries, based on the free movement of capital.

In the recent ruling C-6/12 *P Oy*, the CJEU decided on the compatibility of the Finnish tax loss carry-forward permission system with the EU principles concerning state aid. In the matter, the Commission represented the view that the Finnish loss carry-forward rules could constitute state aid if the tax authorities have a wide discretion, or if they base decisions on criteria unrelated to that tax regime. In the absence of sufficient information,[16] the CJEU did not clearly state whether or not the Finnish system does constitute state aid but ruled that any possible state aid would be considered as 'existing aid', and hence would not be subject to any clawback. In line with the Finnish state's interpretation of the loss carry-forward rules expressed in the court proceedings (that no criteria unrelated to the tax regime should be taken into account in loss-carry forward permission matters), the Supreme Administrative Court has, after the CJEU ruling, issued two published decisions on the loss carry-forward system in favour of the taxpayer. In the ruling concerning the case C-6/12 *P Oy*, the Supreme Administrative Court stated that the state aid questions do not prevent the applicability of the Finnish loss carry-forward

15 However, in the ruling C-123/11 *A Oy*, the deductibility of final losses was accepted in the context of a cross-border subsidiary merger.

16 The statutory provisions concerning this system are very general in nature, and the criteria applied in practice when the tax authorities assess carry-forward permission matters are not based on statute but merely on tax practice and tax authority guidelines. Some of the criteria so far applied in practice (such as employment considerations related to the company applying for a carry-forward permission) have clearly been unrelated to the Finnish tax system. In the proceedings, the state of Finland claimed that the existing tax practice and the tax authority guidelines in fact reflect an incorrect interpretation of the law and, according to the correct interpretation, no criteria unrelated to the tax system should be applied.

system. In another matter, the Supreme Administrative Court concluded that a loss-carry forward permission could be granted in a case where the tax-related criteria were fulfilled but the criteria unrelated to the tax regime (e.g., importance of the applicant company as an employer) were apparently not fulfilled. Hence it appears that, as a consequence of the decision C-6/12 *P Oy,* loss carry-forward permission decisions should in the future be based on tax-related criteria only, or at least that non-tax-related criteria should be of less relevance than they used to be. However, the Tax Administration has not issued any new guidelines concerning the criteria based on the decision C-6/12 *P Oy*, and future developments in this question remain to be seen.

As a Member State of the EU, Finland has implemented the EU VAT Directive in the Finnish Value Added Tax Act. The general VAT rate is 24 per cent, and there are reduced tax rates on certain goods and services (14 per cent and 10 per cent). Certain goods and services, such as financial services and real property, are exempted from VAT. The supplier of exempt goods and services does not have the right to a deduction or refund of input VAT on goods and services purchased for these transactions. In addition to the VAT exemption, some supplies are subject to zero-rated VAT. The supplier subject to zero-rated VAT is not liable to pay VAT on the supplies; however, it has the right to a deduction or refund of input VAT on goods and services purchased for these transactions. In addition, a VAT threshold system has been incorporated into the Finnish tax system. If the annual turnover of the business activity does not exceed €8,500, there is no liability to register in the VAT register and no VAT is levied. When this threshold is exceeded, the taxpayer receives a relief, which gradually decreases with the increase of turnover. The full amount of VAT is levied if the annual turnover is €22,500 or more.[17]

According to the Finnish Value Added Tax Act, the VAT grouping rules are applicable only to companies within the financial and insurance sectors. In the matter C-74/11, *Commission v. Finland*, the Commission had urged that the Finnish VAT grouping rules are in breach of the EU VAT Directive by restricting the availability of VAT grouping to the financial and insurance sectors. In its ruling, however, the CJEU disagreed with the Commission's view and stated that the Commission had failed to show that the restriction of the application of the VAT grouping rules to companies in the financial and insurance sector would be contrary to European Union law.

X AREAS OF FOCUS

The Finnish Tax Administration has recently significantly increased its resources in transfer pricing matters, and a new transfer pricing unit has been created. This development has also been evident in recent tax disputes, where transfer pricing matters have been the subject of increased focus. As discussed above, new and rather far-reaching interpretations of the transfer pricing rules have also recently been introduced by the Tax Administration.

17 Furthermore, if the total amount of intra-EU acquisitions of goods by a legal person not subject to VAT does not exceed a minimum threshold of €10,000 per annum, these acquisitions are not subject to VAT.

Many recent transfer pricing matters and other tax disputes have in some form concerned interest, and especially the deductibility of interest costs. This may partially be related to the new interest deduction limitation legislation, which entered into force as of 2014. In connection with discussions concerning the new legislation, there has been a heated political debate around various tax-planning structures, and especially private equity funds operating from tax haven jurisdictions. Thus, it would seem likely that the risk of tax disputes is elevated in companies and structures linked to private equity funds and other entities resident in non-tax treaty jurisdictions.

Regarding tax-related criminal proceedings, recent areas of discussion have included the relationship of the sanctioned reporting obligations under the tax law and the protection against self-incrimination, as well as questions related to the *ne bis in idem* principle in matters where both tax penalties and criminal penalties could in principle be imposed.[18]

XI OUTLOOK AND CONCLUSIONS

In transfer pricing cases, the Tax Administration has made far-reaching interpretations of the OECD Guidelines, which the Tax Administration apparently wishes to use as a new substance-over-form tool, in parallel and similarly to the anti-avoidance provision. It is likely that various other kinds of transfer pricing-related disputes will also arise. Generally, it should be noted that many practices that have previously been accepted (such as debt push-down transactions) are now being challenged by the Tax Administration.

18 For example, these questions have arisen regarding the tax processes related to the Finnish clients of the Liechtenstein-based bank LGT Group.

Appendix 1

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