



## Issues Relating To Organizational Forms And Taxation

### FINLAND

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1. **Identify the forms of organization available in your jurisdiction and discuss the advantages and disadvantages of each (eg., corporation, limited liability company, partnership, limited partnership, co-operative, etc.), describing which type of legal entity is mostly used or is of special interest, namely by foreign investors.**

In Finland, the main available forms of organization are public and private limited liability company, general partnership, limited partnership, cooperative, branch office of a foreign trader, association and foundation. In addition e.g. European company (*Societas Europaea*), European cooperative society and European economic interest group are available. An individual can also carry on trade as a private trader registered with the Trade Register of the National Board of Patents and Registration of Finland (“NBPR”). The most commonly used form for establishing a legal entity in Finland is the limited liability company, but the partnerships and the cooperative are also popular. We will in the remaining questions only discuss the features of such most relevant forms as well as establishment through a branch office, which is a common way for foreign traders to carry on trade in Finland.

#### Limited Company

A limited company is governed by the Finnish Companies Act (“Companies Act”) and the articles of association (“Articles”) of the company in question. The shareholders can quite freely agree on the provisions to be included in the Articles, but cannot deviate from certain mandatory provisions of the Companies Act. Such mandatory provisions relate mainly to the protection of creditors and minority shareholders and to certain actions towards the

authorities. The limited company shall in its Articles be defined either as a private or a public limited company. The shares of a public limited company can be admitted to public trading and it has a higher minimum capital requirement than the private limited company. Small private limited companies with fewer than 10 employees constitute more than 90 per cent of the registered businesses in Finland.

### **Branch Office**

A branch office is a part of a foreign organization or foundation (“Parent Company”) that carries on continuous business or trade from a permanent place of business located in Finland on behalf of the Parent Company. A branch office is not considered an independent legal entity, but merely an extension of the Parent Company. The Parent Company is fully responsible for the liabilities of its branch office. A branch office is, however, generally, a separate tax subject in Finland and is also entitled to act as plaintiff and defendant before the Finnish courts. The operations of branch offices are not widely regulated in Finland and, therefore, mainly general principles of civil law apply to branch offices. Establishing and closing down a branch is simpler and more flexible than for a limited company.

### **Partnerships**

A general partnership and a limited partnership are governed by the Finnish Partnerships Act (“Partnerships Act”). The main difference between the two forms is that in the general partnership all partners are equal, whereas limited partnerships have two types of partners: general partners (also called active partners), and silent partners. General partners are personally liable for the debts of the partnership, whereas silent partners are not. The partners can be either natural persons or organizations, such as other companies. The limited partnership form is suitable e.g. for the purpose of establishing a private equity fund.

The Partnerships Act contains relatively few provisions and many of those provisions are discretionary. Most of the non-mandatory provisions of the Partnerships Act can be set aside by agreeing otherwise in the Partnership Agreement and this allows contractual flexibility for the partners to arrange their business in such a way that suits them best. In addition to the Partnership Agreement, the partners often enter also into a shareholder’s agreement including more detailed provisions on the internal relations between the partners. The overall number of partnerships has not grown significantly in the latest years, as opposed to e.g. limited companies.

### **Cooperative**

A cooperative is governed by the Finnish Cooperative Act (“Cooperative Act”), which is largely based on the previous Companies Act, and hence the form has many similarities with a limited company. The purpose of a cooperative is to promote the economic and business interests of its members by way of the pursuit of economic activity where the members make use of the services provided by the cooperative. A cooperative can also have other objects, such as profit making or achievement of an ideological goal, as long as the governing reason for its existence is to promote the economic and business interests of its members and provide services for them. A cooperative is formed for the benefit of its members and legally all the rights in the cooperative are based on the membership, and not on the shareholding as in a limited company.

The Finnish cooperatives have traditionally been, on average, relatively large in comparison to other legal entities. Some cooperatives have significant holdings in listed companies. In some sectors, such as food industry, retail trade and forest industry, cooperatives not only play a major role in relation to employment and granting benefits for their vast amount of members, but also their turnover can be equivalent to that of a large public limited company.

**2. Are there attributes of the form that you consider unique to your jurisdiction?**

The new Companies Act (that entered into force in 2006) provides for a considerably flexible capital structure for a limited company, setting as a starting point, unless otherwise agreed in the Articles, that the shares of a company are issued without par value, thus separating between shares on one hand and share capital on the other hand. The Companies Act also provides for a flexible possibility to invest unrestricted equity in the company and to return such equity to the shareholders.

The Companies Act allows for several share classes that carry different rights, such as multiple voting rights or different rights to dividend. Traditionally the use of multiple voting shares has been relatively common in e.g. Finnish listed companies.

**3. Describe the management and governance structure for each organizational form.**

**Limited Company**

Shareholders of a limited company exercise their power of decision at the general meeting of shareholders. Besides that, being a shareholder does not carry any additional rights to make decisions regarding the company or to act on behalf of the company.

The board of directors of a limited company is responsible for seeing to the administration of the company and appropriate organization of its operations (general competence). The board of directors is also responsible for the appropriate arrangement of the control of the company accounts and finances. Unless the Articles state otherwise, the board of directors shall consist of one to five members.

A managing director is not mandatory but, if appointed, may make decisions and represent the company in matters related to the day-to-day business operations of the company in accordance with the instructions and orders given by the board of directors. The managing director can be a member of the board of directors. The managing director is responsible for ensuring that the accounts of the company are in compliance with the law and that its financial affairs have been arranged in a reliable manner. In addition, the managing director shall supply the board of directors with the information necessary for the performance of the duties of the board of directors. The board of directors is responsible for overseeing the managing director's actions.

A limited company may also have a supervisory board that supervises the management of the company. The use and significance of supervisory boards has always been limited and it has further declined in recent years.

## **Branch Office**

A branch office can in business matters be represented by persons entitled to, according to the Trade Register, sign the name of the branch. A branch of a foreign trader must in addition have a representative entitled to receive summons and other notifications on behalf of the Parent Company.

## **Partnerships**

A partnership shall have at least two partners who jointly carry on trade on the basis of the Partnership Agreement. The rights and obligations of and the division of management roles between the partners are primarily determined by the Partnership Agreement and if those are not agreed by the partners, the Partnerships Act lays down the rules for them. Usually a partnership does not have such corporate organs (e.g. a board of directors or a general meeting) as a limited company. All general partners are according to the Partnerships Act severally entitled to represent and sign for the partnership; however in governance matters unanimity is usually required. Silent partners are not allowed to represent or sign for the partnership.

A partnership can have a managing director, but this is not common. The duty of the managing director is to manage the day-to-day business of the company.

## **Cooperative**

The management and governance of a cooperative is similar to that of a limited company. The members of a cooperative exercise their power of decision at the general meeting of the members, or alternatively, if the cooperative has a large number of members, they can appoint delegates that exercise the members' power of decision in all or certain matters.

Unless the rules of the cooperative state otherwise, the board of directors of a cooperative should consist of one to seven members. The supervisory board, if appointed, has more extensive powers than the supervisory board of a limited company.

#### **4. Is there a residency requirement for management or owners? In particular, are there restrictions or prohibitions on foreign investors to perform, or have interests in, specific activities?**

For all forms of organization, at least one member of management shall be resident in the European Economic Area ("EEA"), or a permit from the NBPR is required. In limited companies and cooperatives, this concerns the members of the board of directors and the managing director. In partnerships, this concerns the general partners. The silent partners of a limited partnership are not required to have a place of residence within the EEA.

Further, if the Parent Company establishing a branch office in Finland is from outside the EEA, a permit is required from the NBPR.

If a permit from the NBPR has been received for the establishment of an entity, in which none of the board members, general partners, managing director, persons authorized to represent the entity or procuracy holders are resident within the EEA, a representative resident in Finland entitled to receive summons on behalf of the entity shall be appointed.

In regular businesses there are no restrictions based on the place of residence or nationality regarding the right to own shares or other interests. There are, however, some special situations which are governed by the Act on the Monitoring of Foreigners' Corporate Acquisitions in Finland. The Act requires approval from the Ministry of Employment and the Economy to acquisitions where there is e.g. a national defense interest. A committee report in the form of a Government Bill proposing a renewal of said act has been issued by the Ministry of Employment and the Economy in March 2010.

**5. Describe the extent to which management and owners are exposed to liability.**

**Limited Company**

The Companies Act is based on the principle of limited liability and, in principle, the shareholders have no personal liability for the obligations of the company other than to the extent they have invested in the company. A shareholder may, however, at least theoretically, be held liable for damages for the loss that he or she, by contributing to a violation of the Companies Act or a company's Articles, has deliberately or negligently caused to the company, another shareholder or a third party. Shareholder liability requires that the shareholder can be presumed to have been adequately acquainted with the company's activities.

The liability of the members of the board and the managing director is two-fold: a director can firstly be personally liable to the company (but not to its shareholders or third parties) where he or she has caused loss or damage to the company through a deliberate or negligent violation of his or her duty of care; and secondly he or she can be personally liable to the company, a shareholder or a third party where he or she has caused loss or damage through a deliberate or negligent violation of the provisions of the Companies Act or the Articles. For said provisions to apply, the board member or managing director shall have caused the damage while in office.

**Branch Office**

A branch carries on trade in the name and for the benefit of the Parent Company that has established the branch. The Parent Company is thus ultimately responsible for the debts and other obligations that the branch may undertake.

**Partnerships**

The partners of a general partnership and general (active) partners of a limited partnership are personally liable for the debts and other obligations of the partnership, whereas the liability of the silent partners of a limited partnership is limited to the amount of said partner's contribution agreed upon in the Partnership Agreement.

**Cooperative**

The liability of the members and/or management of a cooperative corresponds in principle to respective the liability of the shareholders and/or management in a limited company.

**6. Ownership interest: (i) how is it represented? (ii) is it transferable?; and (iii) is there a minimum number of owners?**

**Limited Company**

- i. The ownership interest in a limited company is represented by shares. All shares carry equal rights in the company, unless otherwise provided in the Articles. It is possible to stipulate in the Articles that the company has shares that differ from each other as regards the rights or obligations they carry, such as voting rights or rights to dividend.
- ii. A share may be transferred and acquired without restrictions, unless otherwise provided in the Articles. However, in private limited companies it is fairly common to include in the Articles a redemption and/or a consent clause. A redemption clause allows the other shareholders, the company or another person to redeem a share that was meant to be transferred to another person. A consent clause requires the consent from the company's board of directors or the general meeting for the acquisition of the company's share. Other restrictions to the free transferability are not allowed. Any possible contractual restrictions to transfer the shares agreed upon by the shareholders in a separate agreement are not binding towards the company, but have effect between the parties.
- iii. A limited company must have at least one shareholder.

**Partnerships**

- i. The Partnerships Act does not provide for an instrument representing the partners' ownership interest, but the interest can be described as a "share of the partnership". The share of the partnership encompasses *inter alia* the duty to invest the initial contribution, the right to the future profits of the company and governance rights. The initial contribution of each partner, as well as the rights to the future profits of the partnership should be agreed upon in the Partnership Agreement. Unless anything else is agreed, the partners are allowed to an interest *pro rata* on their contribution, whereafter the profits are distributed equally between the partners.
- ii. A share of the partnership, or any part of it, is not transferable, unless otherwise agreed in the Partnership Agreement or unless all the partners (including the silent partners) give their consent to the transfer.
- iii. A general partnership must have at least two partners and a limited partnership must have at least one general partner and one silent partner. Typically the amount of general partners is kept at a minimum due to the personal liability of the partners.

**Cooperative**

- i. The ownership interest in a cooperative is represented by participation interests (shares). It may be stipulated in the rules of the cooperative that the cooperative can also have supplementary participation interests (supplementary shares) or investment participation interests (investment shares). However, supplementary shares and investment shares do not carry voting rights. Supplementary shares and investment

shares are typically issued for financial purposes. Allotment of investment shares is rare and those are usually allotted as merger consideration.

- ii. The membership in a cooperative is not transferable, but the shares are, unless otherwise stipulated in the rules of the cooperative.
- iii. A cooperative must have at least three members.

#### **7. Is there a minimum capitalization?**

The minimum share capital is EUR 2,500 for a private limited company and EUR 80,000 for a public limited company. There is no minimum capital requirement for partnerships or cooperatives, nor is any capital contribution required when establishing a branch office.

#### **8. Is there a security that can be issued to the public?**

The shares or other securities of a public limited company as well as the shares, supplementary shares and investment shares or other securities of a cooperative can be admitted to public trading.

The Companies Act provides for a quite flexible variety of securities or instruments that a public limited company can issue that can be admitted to public trading, such as convertible bonds, option rights or other special rights that entitle their holder to shares.

Also subscription rights and rights to dividend, interest or other proceeds of a limited company or a cooperative can under the Finnish Securities Market Act be admitted to public trading, as well as debt instruments, such as bonds.

#### **9. Can the form incur debt, or grant security for debt?**

##### **Limited Company**

A limited company can incur debt and grant security for debt provided that this is in the best interest of the company and the fulfillment of the so called “corporate benefit” requirement is observed. A loan should generally be taken on arms-length market terms to avoid possible allegations on breach of the duty of care or provisions concerning unlawful distribution of assets.

The Companies Act contains special provisions on a subordinated capital loan, which is subordinated to all of the other loans of the company and the interest and principal of which can be paid back only within the limits of the unrestricted equity of the company. Further, the Companies Act includes a prohibition on financial assistance, i.e. a company is not allowed to finance or grant security for the purpose of acquisition of its own shares.

##### **Branch office**

A foreign trader can incur debt and grant security in the name of the branch, but as the branch is not an independent legal person, the Parent Company of the branch is ultimately responsible for the debts and other obligations that are undertaken in the name of the branch.

## **Partnerships**

A partnership can incur debt and grant security for debt. As the general (active) partners of a partnership are personally liable for the debts and other obligations of the partnership, the credit standing of a partnership is normally defined on the basis of the financial condition of the general partners.

## **Cooperative**

A cooperative can decide to enter into similar debt and security arrangements as a limited company, as the forms are in this respect governed by similar provisions.

### **10. What is the duration of the form? Can it be renewed?**

All forms are in principle perpetual, but it can be agreed otherwise in connection with the incorporation. No form of entity can be renewed as such, as an entity that has been removed from the Trade Register cannot be re-entered into the Trade Register. If the operations of an entity that has been dissolved are to be continued, it is required to be re-incorporated in accordance the applicable acts. The duration and dissolution of different forms is presented below in more detail.

#### **Limited Company**

In principle the duration of a limited company is perpetual. However, it can be stated in the Articles that the company has certain duration or that it shall be placed into liquidation under certain pre-determined circumstances. Such provisions tend to be extremely rare.

The shareholders' meeting can decide on placing the company into liquidation and its subsequent dissolution. During the liquidation, the financial matters of the company are settled, its operations ceased, its assets converted to cash, if required, its debts discharged, and its net assets distributed to its shareholders, whereafter the final accounts and the dissolution of the company are registered with the Trade Register. The company may still exist thereafter, but its legal competence is restricted.

#### **Branch Office**

In principle the duration of a branch office is perpetual unless otherwise decided by its Parent Company. The termination of a branch office must be notified without delay to the Trade Register.

## **Partnerships**

The duration of a partnership is agreed in the Partnership Agreement. The duration of the partnership can be perpetual, agreed to last for only a fixed term or subject to a notice of termination under some agreed conditions. The Partnerships Act guarantees the right to demand that the partnership shall be dissolved under certain conditions. A partner can, for example, demand a partnership to be dissolved when another partner is declared bankrupt, or when the duration of a fixed-term partnership has exceeded ten years. Under normal circumstances the partners decide on placing the company into liquidation. If the assets of the partnership are sufficient to satisfy the claims of the creditors the remaining assets are distributed to the partners and the partnership is dissolved. On the other hand, if the debts exceed the assets, the remaining debts are distributed to the general (active) partners who are

personally liable for the debts. The Partnerships Act also provides that a unanimous decision of the partners may close down the partnership without any separate liquidation proceedings. This requires a unanimous decision by all partners, including silent partners.

### **Cooperative**

In principle the duration of a cooperative is perpetual, but likewise as in a limited company, it can be stated in the rules of the cooperative that it has certain duration. The cooperative can be dissolved through liquidation proceedings.

## **11. Describe the process, customary time period and approximate cost of establishing the form.**

The registration fee charged by the Trade Register for the establishment is EUR 350 for a limited company, a branch office or a cooperative and EUR 180 for a partnership. The handling time of a start-up notification at the Trade Register is approximately four weeks, however if permits, as set out under question 4 above, are required, additional time should be reserved for the application of such. The application cost charged by the Trade Register for a foreigner's permit is EUR 110 per each foreigner.

The incorporation process for different entities is described below in more detail.

### **Limited Company**

In order to incorporate a limited company, a Memorandum of Association shall be executed, the Articles drawn up, a bank account opened for the company, the shares subscribed and paid for, and the incorporation registered with the Trade Register. Limited companies come into existence through registration. The formation of a limited company is notified to the Trade Register by using the start-up notification forms provided by the Trade Register in Finnish or Swedish. A limited company must be registered within three months from the signing of the Memorandum of Association, or the incorporation expires. Typically 1-2 months should be reserved for the entire incorporation process. Off-the-shelf companies incorporated by private service providers are available at a shorter notice and are typically sold for a few thousand Euros.

### **Branch office**

The Parent Company of a branch must submit a start-up notification concerning its branch to the Trade Register before the branch commences its operations.

### **Partnerships**

A partnership comes into existence as soon as a Partnership Agreement has been concluded, unless otherwise agreed. The Partnership Agreement is normally made in writing, but can also in some rare situations be concluded orally or through silent agreement. Partnerships are also required to file a start-up notification with the Trade Register, even though registration is not a requirement for the partnership's existence as opposed to e.g. limited companies. The notification should be filed before the start of operations.

### **Cooperative**

In order to incorporate a cooperative, an Incorporation Instrument (a written incorporation agreement) shall be executed, the rules of the cooperative drawn up, the managing director

and the chairman of the board elected (if applicable), and the incorporation registered with the Trade Register. A cooperative comes into existence through registration.

**12. Are there requirements for the government (central or local) to be part of a project or investment vehicle or receive part of the profits arising therefrom (apart from taxes)?**

No.

**13. For what taxes is the form liable?**

**INCOME TAXATION**

**General remarks**

Corporate entities are subject to corporate income tax at a flat rate (currently 26 per cent). Certain entities, such as some entities owned or financed by the state, are defined as non-taxable.

Employers must make social security contributions to the state to cover the national old-age pension and health insurance and also certain insurance contributions.

**Limited company**

In general, all income derived by companies is taxable. A company can generally have taxable income from two sources, i.e. business and other income. Loss carry-forwards can only be deducted from the taxable income in the same source. As a main rule, losses can be carried forward up to 10 tax years. However, capital losses from the disposal of non-business assets belonging to the other income source can only be deducted from the disposal of other non-business assets in the same accounting year or in any of the 3 following years (based on a draft government proposal this period may be extended to 5 years from either 2010 or 2011).

Dividends are exempt in most cases (and non-tax deductible for the distributor). Capital gains on the sale of shares and liquidation proceeds are exempt under certain conditions. Capital contributions by shareholders are generally not considered to be taxable income.

**Branch office**

Branch offices forming a permanent establishment (“PE”) in Finland are for tax purposes treated similarly as Finnish limited companies and income attributable to the branch is subject to tax. Finnish domestic legislation provides a definition of a PE of a non-resident company, which applies unless a double tax treaty provides otherwise. Cost allocation between the Parent Company and the branch should follow the arm’s length principle.

**Partnerships**

General and limited partnerships are transparent for Finnish tax purposes. The partnership is treated as an accounting unit, the net profit of which is calculated separately, after which the profit is allocated among the partners. The income is considered to pass to each partner and the partner is assessed on his share of the income, regardless of whether or not it is actually distributed to him.

Losses incurred by the partnership can generally be carried forward up to 10 subsequent fiscal years. However, in case the operations of the partnership are taxed in accordance with the Income Tax Act instead of the Business Income Tax Act, capital losses can only be deducted from corresponding capital gains in a tax year in question and the following three

years (based on a draft government proposal this period may be extended to 5 years from either 2010 or 2011).

### **Cooperative**

Cooperatives are treated similarly to limited companies for tax purposes, but there are exceptions. Annual surplus (i.e. the difference between annual profit and interest payable for invested capital to the members) is fully tax deductible provided that distributed to its members in relation to services used by them. This ensures that no double taxation will take place but instead most of the income is taxed at the level of the members. The return of surplus is taxable income for the members. Interest payable by a cooperative to its members for their invested capital (i.e. profit distributions) is taxed similarly as dividends from limited companies.

## **INDIRECT TAXATION**

### **Value added tax**

In principle, all resident entrepreneurs who are engaged in the commercial supply of goods or services are subject to VAT and are required to register for VAT purposes. However, supplies of selected goods and services are exempt. The standard VAT rate is 22 per cent.

### **Transfer tax**

All organizational forms are generally subject to a transfer tax, payable by the transferee, on the deeds for the transfer of immovable property at a rate of 4 per cent of the transfer price. The transfer of shares in Finnish companies and other domestic securities is generally subject to transfer tax of 1.6 per cent of the sales price.

### **Real estate tax**

Real estate tax is levied on all kinds of immovable property in Finland regardless of its function, with the exception of farming and forest land.

## **14. What is the tax treatment of payments to foreign owners?**

### **Taxable Finnish source income**

Non-residents are subject to tax on Finnish-source income only, provided that domestic law and the relevant tax treaty allow taxation. The Income Tax Law defines *inter alia* the following types of income to be from Finnish sources:

- a) Business income from business activities carried on in Finland;
- b) Dividends from Finnish companies and profit distributions from Finnish cooperatives;
- c) Royalties and similar income if based on property or rights used in business activities in Finland or if the licensee or lessee is a resident of Finland; and
- d) Income and capital gains from immovable property located in Finland.

Interest received by a non-resident on a loan is exempt according to the Income Tax Law, i.e. not subject to Finnish withholding tax ("WHT"), with the exception of interest on a loan which is deemed as equity.

Most of the double tax treaties of Finland do not allow taxation of Finnish-source business income without a permanent establishment.

### **Limited Company**

Payments such as dividends and royalties from limited companies are subject to Finnish WHT provided that domestic law and the relevant tax treaty allow taxation. Please see question 15 below for further details on WHT on dividends from a limited company.

### **Branch office**

Profits distributed from a branch to the Parent Company are not subject to Finnish WHT. If dividends, interest or royalties are derived through a Finnish PE of a non-resident, such income will be included in the taxable business profit of the PE.

### **Partnerships**

As a starting point, the income share of a non-resident partner in a partnership is taxable in Finland as Finnish source income. In case a double tax treaty applies, however, a non-resident silent partner in a Finnish limited partnership will not be subject to corporate income taxation in Finland unless a PE is constituted for such partner and the partnership income is deemed to relate to such a PE. As a main rule, a PE may be constituted for the partner solely based on its passive investment. However, a special regime is available for non-resident silent partners of a limited partnership carrying out solely private equity or venture capital activities. Income received by such partner is taxable in Finland only to the extent such income would have been taxable had the partner received it directly, i.e. instead of through the partnership, provided that the partner is resident in a country with which Finland has a double tax treaty and that the double tax treaty is applicable to such partner. Even though a PE is not established in Finland, the non-resident silent partner may, subject to applicable double tax treaties, be taxed on income derived by the limited partnership from other Finnish sources. This means, generally, that if no PE is constituted for the partner, only dividends, but not other business income such as capital gains, may be subject to Finnish WHT, provided that no Finnish real property or real property companies are involved.

### **Cooperative**

Interest payable by a cooperative to its members for their invested capital (i.e. profit distributions) are subject to the same tax treatments as dividends from companies in a cross-border situation, i.e. they are subject to Finnish WHT, if applicable.

## **15. Is there a tax treatment which would impact foreign owners differently than owners resident in the jurisdiction?**

### **Dividends**

#### *Resident individuals*

The tax treatment of domestic dividends depends on whether or not the distributing company is quoted. A distribution of 70 per cent of dividends from a quoted company to a Finnish resident individual is taxed as capital income, while the rest is tax exempt. Non-quoted

companies may distribute tax-exempt dividends in an amount corresponding to 9 per cent annual yield on the net worth of the company. However, the maximum annual amount of exempt dividends is EUR 90,000 from all sources per resident individual. If the amount of the dividends exceeds the EUR 90,000 limit but not the 9 per cent limit, 70 per cent of the exceeding part of the dividends is taxed as capital income. If the amount of dividends exceeds the 9 per cent limit, 70 per cent of the exceeding part of the dividends is taxed as earned income subject to progressive taxation.

#### *Resident corporate entities*

In general, dividends received by a resident corporate shareholder from another resident company are exempt income.

As an exception to this rule, 75 per cent of the domestic dividend received is taxable income and 25 per cent tax-free income for a resident company, if:

- a) A non-listed company owns less than 10 per cent of the share capital of the distributing public limited company; or
- b) The shares belong to the investment assets of a financial institution (banks, pension and insurance companies) receiving the dividend.

#### *Non-residents*

As a general rule, non-residents of Finland are subject to Finnish WHT on dividends paid by a Finnish company. The WHT rate is 28 per cent unless set forth in an applicable tax treaty.

Dividends paid to non-resident individuals residing within the EEA can be, upon request by such person, instead of the withholding taxation, taxed pursuant to the Finnish Act on Assessment Procedure, i.e. taxed similarly as dividends paid to residents of Finland, provided that certain conditions are met.

Dividends paid to certain non-resident corporate entities residing within the EEA are either fully tax-exempt or taxed at a reduced WHT rate, depending on how the dividend would be taxed if paid to a corresponding Finnish entity. The dividends may also be exempt based on the Parent Subsidiary Directive or an applicable double tax treaty.

### **Capital gains**

#### *Residents*

Capital gains of resident individuals are taxed at a flat rate of 28 per cent and corporate entities at a flat rate of 26 per cent (applicable in 2010). Individuals can, when calculating the capital gain, instead of the actual acquisition cost apply a so-called acquisition cost presumption (20 per cent, or, for property owned for at least 10 years, 40 per cent of the sales price).

#### *Non-residents*

Non-residents are not subject to capital gains tax in Finland, unless the income is Finnish source income. In general, this means that capital gains for non-residents are not taxable in Finland, unless the non-resident has a PE in Finland or the income derives from immovable property located in Finland.

### **Transfer tax**

No transfer tax is due if shares of a foreign company are sold or if both the seller and the purchaser are non-residents. However, this does not apply if one of the parties to the transfer

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is a Finnish branch of a foreign bank or a foreign investment company. With the exception of listed shares under certain conditions, transfers of shares in Finnish real estate companies are subject to transfer tax also between non-residents.

