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PREFACE

After the past unprecedented 24 months, it is now time to look forward to the post-pandemic world and consider the developments that will likely affect high-net-worth individuals. While (at the time of writing) life begins to resume, the after-effects of the pandemic will reach into the next decade and possibly beyond. The main political question of the day is 'Who will pay for the costs of the pandemic?' As the retail and hospitality industries were forced to close, there was a severe reduction in capacity in construction and manufacturing and high unemployment rates threatened, and governments intervened to provide stimulus packages to all areas of the economy.

The latest reports indicate that the pandemic had cost the UK government £372 billion as at 31 March 2021. [1]To put this in perspective, the total tax revenue that the UK government collected for tax year 2019–2020 was £636.7 billion.[2] Therefore, the Covid-19 bill constitutes almost 60 per cent of total tax revenue, or almost 14 per cent of the UK's GDP for 2019, and there are likely to be more costs to come.

On the other side of the Atlantic, Harvard economists David Cutler and Lawrence Summers estimate the pandemic will cost the United States at least US$16 trillion if the pandemic is largely over by autumn 2021.[3] That would comprise roughly 75 per cent of the nation's 2019 GDP, which was £21.43 trillion. Over in Europe, Germany's government estimated, in December 2020, that the pandemic would cost the country €1.3 trillion, almost 33 per cent of the country's 2019 GDP.[4]

For the rest of the 2020s, the aim for governments will be to generate higher revenues to pay off this borrowing, while continuing to stimulate the economy through fiscal interventions such as keeping interest rates low and government spending. Generating higher revenues will pose a challenge, as the pandemic has worsened inequality and had the greatest impact on individuals with low incomes.[5] Meanwhile, many high-net-worth individuals have benefited financially from the pandemic.[6] Not since the end of the Second World War have the tongues of rumour wagged so much or so loudly on the subject of wealth taxes.

1 https://www.nao.org.uk/covid-19/cost-tracker/.
2 https://www.nao.org.uk/work-in-progress/the-management-of-debt-owed-to-hmrc/
3 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7604733/.
4 https://www.dw.com/en/coronavirus-germany-faces-13-trillion-covid-bill/a-56103251.
5 https://www.ft.com/content/cd075d91-fafa-47c8-a295-85bbd7a36b50.
6 https://www.ft.com/content/747a76dd-f018-4d0d-a9f3-4069bf2f5a93.

As the introduction to the UK's Wealth Tax Commission[7] Report[8] points out, the concept of a one-off levy during a time of financial crisis is not a novel one in many countries, including the UK. In 1981, during recession, Conservative Prime Minister Margaret Thatcher's government introduced a tax on banks, which raised about £400 million. In 1997, Labour Prime Minister Tony Blair's government imposed a tax on privatised utility companies, and raised £5 billion.

The OECD report on Wealth Taxes notes that in 1990, 12 countries had wealth taxes, but since then many countries have repealed the tax and now only four countries currently tax the net wealth of their residents annually.[9] Only three European countries currently have a general wealth tax, being Norway, Spain and Switzerland. The Norwegian tax is on net wealth where a resident owns more than 5 million kroner in worldwide assets. The Swiss tax is levied on worldwide assets, with the exception of immovable property abroad. The tax rates vary from canton to canton. The Spanish wealth tax progresses from 0.2 to 3.75 per cent where the individual holds assets above €700,000. Individuals living in Madrid are exempt from the tax.

Argentina was the first country to implement a wealth tax in response to the pandemic at the end of 2020 in the Solidarity and Extraordinary Contribution of Great Fortunes Law. The levy is a one-off, payable by those whose assets total 200 million pesos. The rate of the tax is progressive, with Argentinian assets taxed up to 3.5 per cent and worldwide assets taxed up to 5.25 per cent. The tax has raised roughly 223 billion pesos. This amounts to about half a per cent of Argentina's GDP[10] and 75 per cent of the government's target amount of the tax to be raised.

All taxes are wealth taxes to some degree, be they income tax, capital gains tax, value added tax, inheritance tax or corporation tax. However, these taxes are taxes on transfers of wealth, on dispositions of wealth and on accumulations of wealth rather than a tax on all the assets an individual holds on a particular date.

So if governments are to bring in wealth taxes, what might they look like? The UK Wealth Tax Report advocates a one-off wealth tax as being more effective than an annual one.[11] A one-off wealth tax is much harder for taxpayers to avoid as the date of assessment of the individual's wealth can be announced at the same time as the tax itself. Furthermore, a one-off tax does not distort taxpayers' behaviour or disincentivise taxpayers from working, investing or even being resident in the country. The report recommends that it should be possible to pay the tax in instalments to assist those who hold mainly illiquid assets, such as residential property, from having to sell in order to pay the tax. It also recommends that the tax should be levied on individuals' net wealth, that is, after deduction of debts and liabilities, and that jointly held assets should be apportioned between owners. The report then goes on to estimate that such a tax on the net assets of UK residents above £500,000 could, at 1 per cent per annum for five years, raise £260 billion. If levied on net assets above £2 million, it could raise £80 billion.

7 Although the title makes the Commission sound official, it was not a government report but rather one in which the London School of Economics played a central role.

8 https://www.wealthandpolicy.com/wp/WealthTaxFinalReport.pdf.

9 https://www.oecd.org/tax/tax-policy/role-and-design-of-net-wealth-taxes-in-the-OECD-summary.pdf.

10 https://www.bloomberg.com/news/articles/2021-05-03/argentina-wealth-tax-fought-by-millionaires-raises-2-4-billion.

11 https://www.wealthandpolicy.com/wp/WealthTaxFinalReport.pdf.

Meanwhile, a European study developed in partnership with the Karl Renner Institute and the Austrian Federal Chamber of Labour advocates a pan-European wealth tax as well.[12] The argument for a pan-European tax is that it would be much harder for individuals to avoid, unless they became resident outside of Europe altogether. Within the 22 European countries, the richest 1 per cent of individuals hold 32 per cent of European wealth whereas the poorest 50 per cent of individuals hold 4.5 per cent between them. The report finds that a 2 per cent tax on individuals who hold net assets above €1 million would only tax 3 per cent of the population and would likely raise revenues in the region of €192 billion, accounting for some evasion. A very progressive tax rate with a rate of 10 per cent above assets of €500 million could raise in the region of €357 billion, which equates to 3 per cent of European GDP.

In the United States, there is a similar wealth disparity. The richest 10 per cent of Americans hold just under 70 per cent of US wealth.[13] The *Financial Times* reported in February 2021 that a one-off 5 per cent tax on the richest 10 per cent would raise US$4 trillion, amounting to 19 per cent of the US's GDP. Democrat Elizabeth Warren advocates for an 'ultra-millionaire tax' at 2 per cent above US$50 million and 6 per cent above US$1 billion. It is estimated that this would bring in revenues of US$3.75 trillion over 10 years.[14]

As well as introducing a new wealth tax, there are also calls for changes to existing taxes. The OECD recently published a study on inheritance taxation in OECD countries, which notes that the inheritance tax bases in many countries have been narrowed due to exemptions and reliefs.[15] Making estate and gift taxes more rigorous would not only raise revenue but also reduce wealth inequality through intra-generational transfers. The report also notes that, with many countries having ageing populations, there is a disparity between wealthy older generations and poorer younger generations. On average, inheritance tax revenues equate to only 0.5 per cent of the total tax revenues in most OECD countries, with only Belgium, France, Japan and South Korea collecting 1 per cent of total tax revenues from inheritance taxes.[16]

Within the 38 member countries of the OECD, 24 tax assets that are passed on the death of the owner. Interestingly, the majority of these countries tax on the basis of the value the recipient receives. Only four countries, being the US, the UK, South Korea and Denmark, tax on the basis of the value of the deceased's estate. US President Biden is attempting to push through a reduction in the lifetime gift and estate allowance from US$11.7 million to US $3.5 million, as well as to increase the top tax rate to 45 per cent up from 40 per cent.

The UK has no tax on outright lifetime gifts between individuals, but the threshold for gifts the deceased makes in the last seven years of life and through his or her estate is £325,000. However, many individuals can circumvent this through making lifetime gifts outside the seven-year window with no tax implications. However, the OECD report suggests that capturing lifetime gifts in the tax base, as well as reducing exemptions and reliefs, would make inheritance taxes more effective as well.

12 https://www.feps-europe.eu/attachments/publications/a%20european%20wealth%20tax_policy%20study.pdf.

13 https://www.ft.com/content/0952761a-f565-46be-a515-12659551169a.

14 https://elizabethwarren.com/plans/ultra-millionaire-tax,

15 OECD (2021), Inheritance Taxation in OECD Countries, OECD Tax Policy Studies, OECD Publishing, Paris, https://doi.org/10.1787/e2879a7d-en.

16 ibid, p. 5.

One separate non-pandemic rationale that has been advanced in the UK to support estate and gift tax reform is the theme of 'inter-generational fairness'. A report published by the All – Parliamentary Group in early 2020[17] advocated replacing the current UK donor-based tax regime with one based on a donee-based tax where every donee was given a lifetime exemption. Gifts in excess of that exemption would attract a 10 per cent flat tax rate. The preference for a donor-based system was in part fuelled by a desire to encourage donors to make gifts to their grandchildren as well as their children. It is unclear whether this approach will find favour with the government.

Meanwhile, despite the pandemic, transparency and automatic information exchange initiatives, which formed the main subject of my forewords in earlier years, have been progressing apace. Where high-net-worth individuals are taking advantage of technological advancements and easier remote working, and spending more time in different countries, they may become tax resident in multiple jurisdictions and, if not, at least reportable under measures such as those of the Financial Action Task Force, the Common Reporting Standard (CRS) and the sixth version of the EU Directive on administrative cooperation (DAC6). Indeed, the CRS FAQs were updated to advise financial institutions that where an individual's interests are split between multiple jurisdictions, the account can be 'reported to all Reportable jurisdictions where there is a residence address'.[18] In this case, the individual will be reported to more tax authorities and perhaps subject to a higher degree of scrutiny than before.

Individuals are already facing enquiries from tax authorities as a result of the information exchanged between different countries. Currently, many enquiries are merely requesting further information, but it may be that in the near future countries will begin to adapt and modulate taxation regimes on the strength of this information. The introduction of the DAC6 legislation across the European Union will also provide a plethora of information to tax authorities and governments about arrangements that are not currently caught by the CRS.

Finally, the US is currently pursuing a global minimum corporation tax rate, which was pitched at 21 per cent before dropping to 15 per cent. Given high budget deficits and the need for increased revenue, governments are going to be even more reluctant to allow multinational corporations to avoid paying taxes in the countries in which they achieved their revenue. The oft-maligned Amazon, for example, made a record €44 billion in Europe in 2020, and yet paid no tax as the Luxembourg headquarters made a €1.2 billion loss.[19]

However governments end up dealing with the large debts that have been created, the rate of change, be it to tax rules or to disclosure obligations, continues to increase exponentially. What is clear is the need to keep a clear view of the road ahead so that our high-net-worth individual clients and their structures can adapt to the changing landscape.

John Riches
RMW Law LLP
London
August 2021

17 https://www.step.org/system/files/media/files/2020-05/STEPReform_of_inheritance_tax_report_012020.pdf.

18 https://www.oecd.org/tax/exchange-of-tax-information/CRS-related-FAQs.pdf, Sections II-VII: Due Diligence Requirements, FAQ 3.

19 https://www.theguardian.com/technology/2021/may/04/amazon-sales-income-europe-corporation-tax-luxembourg.

Chapter 10

FINLAND

Joakim Frände and Stefan Stellato[1]

I INTRODUCTION

Finland is a northern European country with a population of 5.5 million, a substantial portion of which lives in the metropolitan area in the south of the country, including the Finnish capital Helsinki. Finland joined the European Union in 1995 and was among the first Member States to adopt the euro in 1999. Finland's geographical position as a western European market economy and a stable parliamentary democracy sharing a long border with Russia is unique and has shaped the history of the country. In 2017, Finland celebrated the centenary of its independence from Russia. Finland is now one of the safest and least corrupt countries in the world, with a high standard of living and a high degree of income equality. It also boasts a world-renowned school system, contributing to most Finns having a very good command of English. Finland is the home of a significant Swedish-speaking minority and the country has two official languages, Finnish and Swedish.

The success of the cell phone and networks manufacturer Nokia Corp, along with a number of high-tech companies, was a major factor contributing to a long period of strong economic growth that Finland enjoyed in the 1990s and 2000s. On the other hand, Finland has suffered heavily from the 2008 financial crisis, which coincided with a sharp decline in Nokia's businesses, as well as a downturn in trade with Russia. This combination led, inter alia, to a very slow recovery in terms of GDP growth and to Finnish long-term debt being downgraded from its previous AAA rating by all major credit agencies. Finland is now struggling with increasing levels of national debt and an ageing population.

The Finnish economy was dominated by agriculture until the 1950s, and rapid industrialisation and growth took place during the following few decades. Since the 1970s, Finland has been among the wealthiest countries in the world. Finland is a Nordic welfare state, characterised by free market capitalism combined with a significant public sector, large-scale income redistribution and high tax rates. Because of these factors, wealth is quite evenly distributed among Finns and Finland is home to relatively few high-net-worth individuals (HNWIs).[2]

Despite, for example, a broad network of tax treaties, the Finnish high-tax environment is, perhaps, unlikely to attract HNWIs to Finland. Other factors, such as safety, northern nature, stable institutions, low corruption and a renowned education system are, in this regard, more important assets for Finland.

1 Joakim Frände is a counsel and Stefan Stellato is a senior associate in the tax group of Hannes Snellman Attorneys Ltd.

2 The former mobile phone manufacturer Nokia (and the Nokia cluster as a whole) generated a handful of HNWIs, but over the past years HNWIs generated by the gaming industry have received more attention.

II TAX

i Recent developments

One issue that stands out particularly clearly in the recent developments of Finnish tax law is the ever-increasing disapproval of tax avoidance and planning, as manifested also on an international level by the Organisation for Economic Co-operation and Development (OECD) and EU actions against such activities. In addition, the reputational damage to persons and companies engaging in tax avoidance and planning has grown. Finnish persons and companies involved, for instance, in matters concerning the LGT Bank in Liechtenstein or in arrangements published in the 'Panama Papers', are likely to agree. The threshold to prosecute tax-related crimes is low with even relatively small amounts of unpaid taxes resulting in prosecution.

As a main rule, tax-related information is secret, including, for example, rulings and tax returns. However, taxable income and taxes payable (as determined in the annual tax assessment) are public information in Finland. Unsurprisingly, access to this information attracts significant media attention, and each year the media publish listings on the income and effective tax rates of high-income people and companies. Because not all tax-related information is public (e.g., later decisions amending the taxation of a given year remain secret) and that tax-exempt income and income routed to personal holding companies do not show up in the statistics, these listings may be somewhat misleading. In addition, an interpretation of the EU General Data Protection Regulation 2016/679 (GDPR) allows individuals to object to the media disclosure of their tax information on grounds relating to their specific personal situations. Such grounds may relate to, for example, the individual taxpayer's or relatives' health, safety or ability to practise a profession or carry out work. It should be noted that objection only prevents transfer of data to the media for mass publication, meaning that the public tax information remains public – but only available upon request from the tax authorities. Furthermore, according to decisions of the Administrative Court in April 2021, the media have the right to obtain the names of the persons who have objected to media disclosure and, in fact, tabloids have published listings of such persons. As a result, the practical effect of the right of objection has become limited.

The worsening general tax atmosphere can also be seen in the fact that the Finnish general anti-avoidance rule (GAAR) is being applied ever more frequently. The GAAR now appears to be engaged in attacking practices that were previously widely considered acceptable.

Another general trend in Finnish taxation over recent years is the increase of both tax rates and progressiveness. New tax brackets have been added at the high end of the scale for capital income, earned income, gift and inheritance tax. A reverse trend can be discerned in the taxation of corporations – the corporate income tax rate has gradually decreased and the current 20 per cent rate was introduced in 2014. The focus of taxation is also shifting from taxation of income to the taxation of consumption, and the standard VAT rate is 24 per cent. Taxation with underlying environmental or health-related goals is common, for example, within excise taxation.[3] Finland levied a wealth tax for a long time, until it was eliminated in 2006. At about the same time, the *avoir* fiscal dividend tax system was abolished because of its incompatibility with EU law.

3 EU rules on state aid forced Finland to abolish its recently introduced sweets tax, an excise tax, from the beginning of 2017.

Legislative amendments that entered into force in 2020 aim to better align the tax treatment of different forms of investment. The amendments include the abolishment of the possibility to withdraw invested capital from insurance wrappers without triggering taxation, the introduction of a share saving account[4] and broad changes to the taxation principles concerning investment funds.

January 2021 saw the introduction of a very beneficial tax regime for employee share offerings. The regime allows employees to subscribe for the employer company's shares at low prices without triggering taxation on the discount at the time of subscription. Instead, taxation is postponed until disposal of the shares, in which case the income is considered as capital income (not earned income). The regime can only be applied if numerous requirements are met, such as the employer company not being listed on a stock exchange. The old tax regime for employee share offerings, which is less beneficial but has a broader scope of application, remains in force in parallel with the new regime.

Finland had a parliamentary election in April 2019, which the Social Democratic Party won with a margin of just one or two seats over the more right-leaning Finns Party and the National Coalition Party. Nevertheless, the government is much more left-leaning than its predecessor and, during the negotiations to form it, even quite radical tax-related proposals were discussed. Such proposals included, inter alia, the reintroduction of a wealth tax, abolishment of generation shift reliefs, exit tax for individuals, increased tax on dividends from unlisted companies, withholding tax targeted at foreign institutional investors and a meat tax. However, it seems likely that most of these proposals will never actually be implemented despite the covid-19 health emergency, which puts pressure on increasing tax revenues.

ii International agreements

Finland has a wide network of bilateral tax treaties. Finnish tax treaties typically follow the OECD model closely and most of them provide for double taxation relief through the credit method. A number of Finnish tax treaties contain provisions that extend the taxing rights of Finland for a number of years after a Finnish citizen moves abroad.

Finland has recently renegotiated its outdated tax treaties with, inter alia, Spain and Portugal. Renegotiation of the treaties was the result of increasing media attention towards high-income individuals moving to Spain or Portugal to avoid tax on their private sector pensions, as the relevant treaty did not allow Finland to tax such pensions. The new treaty with Spain has applied since 2019. Noteworthily, the Finnish government terminated its tax treaty with Portugal with effect from 2019 to put pressure on the country, which was not working sufficiently to have the new treaty accepted nationally. Therefore, there is currently no applicable tax treaty between Finland and Portugal.

Finland is a signatory of the Nordic Multilateral Tax Treaty, which is a multilateral double taxation convention largely based on the OECD Model Tax Convention.[5] Finland is also among the countries that signed the OECD Multilateral Instrument (MLI) in June 2017. Finland included most of its tax treaties as covered agreements but made broad reservations

4 The adopted model of share saving account is very restricted, because the share saving account, in essence, only allows private persons to invest a maximum of €50,000 in listed shares and to benefit from a tax deferral on dividend income and capital gains. The tax treatment is similar to that for mutual funds: the investor pays capital income tax at the point of withdrawing funds from the account.

5 The signatory countries of the Nordic Multilateral Tax Treaty are Denmark, Finland, Iceland, Norway and Sweden.

to the applicable provisions. Consequently, the most important practical effects of the MLI seem to be the introduction of the principal purpose test and mandatory arbitration procedure. The MLI has been applied as of 2020.

The EU's Anti-Tax Avoidance Directive (ATAD) and its 2017 amendment (ATAD II) have required significant amendments to Finnish national laws, especially with respect to the interest-deduction limitation, controlled foreign corporation (CFC), corporate exit tax and hybrid mismatch rules. Finland is also required to broaden its hybrid mismatch rules to cover reverse mismatch situations as of 2022.

Finland has an agreement with the US to exchange information under the US Foreign Account Tax Compliance Act. Finland has also agreed on automatic exchange of information in the context of the OECD Common Reporting Standard (CRS), implemented at the European Union level through the DAC2 Directive (2014/107/EU). Finland requires, based on OECD and EU transfer pricing initiatives, multinational groups with revenues exceeding a certain global threshold to file country-by-country reports. In addition, the EU Directive on administrative cooperation (DAC6) rules on mandatory disclosure has set an obligation for taxpayers and intermediaries to report, in particular, tax-driven cross-border arrangements. The first exchange of information took place in late 2020.

In 2016, in a case related to the LGT Bank/Liechtenstein tax affair, the Supreme Administrative Court ruled that documents received from a foreign authority may be taken into account as evidence even if it is possible that the documents were obtained through a criminal act.

iii Income tax

Two categories of tax liability exist in income taxation: unlimited and limited tax liability. People that reside in Finland (as defined in the Income Tax Act) are subject to unlimited tax liability and pay tax on their worldwide income. Conversely, people who do not reside in Finland are subject to limited tax liability and pay Finnish taxes solely on their Finnish-sourced income, as defined in the Income Tax Act.

A three-year rule applies to Finnish citizens when they move abroad. Under the rule, a Finnish citizen is considered a Finnish tax resident during the year of emigration and for the subsequent three calendar years, leading to tax liability for both Finnish and foreign-sourced income. However, if the person establishes, to the satisfaction of the tax authority, that no close ties to Finland remain, Finnish tax non-residency (and limited tax liability) may begin before the end of the three-year period. This three-year rule does not apply to foreign citizens.

Taxable income is calculated separately for earned income and capital income. Capital income is income generated through the possession of wealth and earned income is defined as all other income. Earned income is typically salaries, directors' fees or benefits in kind and is taxable at progressive rates of up to approximately 55 per cent. Salary, as well as some other forms of earned income, are subject to social security charges if the recipient is covered by Finnish social security. The social security charges are partly withheld from the salary and partly an expense for the employer. The charges vary, but the employer's and employee's combined contributions are in total approximately 25 to 30 per cent of the salary. Capital income, such as capital gain, is taxable at a rate of 30 per cent up to €30,000 per calendar year and the excess at a rate of 34 per cent. Some capital gains are exempt, including the sale of a house or apartment that has been used as a permanent home for two consecutive years.

Taxable income for all entity types is assessed separately under three different acts, depending, among other things, on whether the source of the income is employment, business or farming. Losses from one source of income may not be offset against another source of income, apart from in rare exceptions. The system was simplified somewhat by taxing most corporations exclusively under the business income source as of tax year 2020. However, there are still limitations on what types of tax-deductible items and taxable income can be offset against each other, which causes uncertainty, especially for private investment companies.

The extensive taxation of capital gains creates an incentive for persons with inherent capital gains to move abroad and realise the gains while no longer subject to Finnish unlimited taxation, or at least be resident in another state under the applicable tax treaty. However, moving abroad before realising a significant capital gain requires careful examination of the applicable tax treaty and tax law provisions, including the above-mentioned three-year rule. In its report of February 2020, the Ministry of Finance did not recommend introducing an exit tax for private persons because of the challenges involved, but recommended monitoring international developments. Consequently, it cannot be excluded that an exit tax on private persons could be introduced during the coming years.

Interest income is also taxable at the capital income tax rates. However, interest paid on deposits in Finnish bank accounts and Finnish bonds is subject to a final tax at source at a flat rate of 30 per cent. As far as interest expenses are concerned, deductions are generally granted only where interest is paid with an aim to obtain taxable income. The interest on loans to buy a permanent home was, however, fully deductible until 2012, when the deductible portion started a gradual decrease and is planned to be completely removed by 2023.

The taxation of dividend income is very complex, and the tax rates range from approximately 7.5 to above 55 per cent. These discrepancies highlight the importance of careful tax analysis but may also offer significant tax advantages. Examples of factors that may have an impact on the applicable tax rate are whether the company distributing the dividend is listed, the value of the company's net assets, the place of incorporation and on what basis the amount of the dividend is determined.

As far as natural persons resident in Finland are concerned, the least tax is payable when receiving from an unlisted company a dividend that meets two conditions: it equals less than 8 per cent of the shares' calculated mathematical value and is less than €150,000 in a calendar year. When these requirements are met, 75 per cent of the dividend is exempt and 25 per cent is taxed as capital income, leading to a tax rate of around 7.5 to 8.5 per cent. At the other extreme are, among others, dividends paid in place of wages and dividends paid by companies in non-EU or European Economic Area (EEA) and non-treaty countries. Such dividends are fully taxable as earned income at progressive tax rates of up to approximately 55 per cent and may in some situations even attract social security charges.

Limited liability companies and certain similar types of companies are subject to 20 per cent corporate income tax on their profits. Cross-border restructurings and managing a company from abroad can trigger exit taxation where assets are, in one way or other, transferred outside the reach of Finnish taxation. In the case of exchange of shares, the tax deferral allowed is forfeited if a person who has been granted shares in consideration moves his or her residence, as intended in the relevant tax treaty or national laws, outside the EEA within five years after the end of the year in which the exchange of shares was carried out.

Finland originally introduced a CFC rule in 1995 and an interest-deduction limitation rule in 2014, which were both tightened as of 2019 owing to the ATAD. Under the current CFC rule, Finland taxes the income of a foreign entity if a Finnish taxpayer, either alone or together with its related parties, has, directly or indirectly, at least 25 per cent of votes, ownership, right to capital or right to profits or assets, and the foreign entity's effective tax rate is less than three-fifths of that calculated under the Finnish rules. An entity within the EEA may escape the CFC rule if it carries out actual economic activities, whereas an entity outside the EEA must meet more criteria to escape CFC taxation. The requirement to carry out actual economic activities makes it much more difficult for entities in tax treaty countries, which were usually exempt under the old CFC rule, to escape CFC taxation and especially Finnish-owned investment companies within the EEA are now struggling with what level of actual economic activities is sufficient. In its 2019 ruling, the Central Tax Board concluded that a Luxembourg investment company did not carry out actual economic activities because it did not have premises, equipment or staff managing day-to-day operations independently in Luxembourg.

iv Gift and inheritance tax

Inheritance or gift tax is payable if the place of residence of the decedent or donor, or the place of residence of the beneficiary or donee, was in Finland at the time of death or donation. In addition, tax must be paid on Finnish real property and on shares in any corporate body in which more than 50 per cent of the assets consist in Finnish real property, even if both the decedent or donor and the beneficiary or donee resided overseas.[6] Only inheritances that are at least €20,000 and gifts that are at least €5,000 are subject to tax.

Inheritance tax is assessed on each beneficiary's net portion of the estate. Tax is payable on portions that are at least €20,000, but widows may deduct an additional €90,000 and minors in immediate lineal descent an additional €60,000 from their portions.

For the purposes of both inheritance and gift tax, the value of any rights of possession is deducted from the beneficiary's portion if such a special possession has been provided for in a will or a deed of gift. The value of the right of possession is not as such taxable, but income derived from the right of possession constitutes taxable income. For example, the title of a house may be donated to person A, but the donor may retain the right to use the house. In this case, person A is taxed on the value of the house less the value of the possession right (calculated according to a formula) and the donor is taxed only on income received from the right of possession (e.g., rental income). However, person A may deduct as his or her acquisition cost the value of the house including the value of the possession right in the capital gains taxation upon a subsequent disposal.

Both gift and inheritance tax have two brackets – the lower tax bracket I applies to close relatives, and the higher tax bracket II applies to more distant relatives and to beneficiaries and donees that are not relatives of the decedent or donor.[7] The taxes are progressive within both brackets. As an example of the applicable rates in 2021 in tax bracket I, the tax payable on an inheritance portion of €200,000 is €21,700. An inheritance portion of €1 million is subject to a tax of €149,700 at the lower limit of €1 million and at 19 per cent on any part exceeding €1 million. In tax bracket II, rates are roughly double those of bracket I.

The Inheritance and Gift Tax Act leaves considerable room for tax planning. It may, for example, be wise to pass down property to a greater number of beneficiaries to multiply recipient-specific allowances and thresholds, but also to mitigate progressivity. The same goals

6 This extended definition of real property is also found in some other tax laws and in tax treaties.

7 Tax bracket I for gift and inheritance tax purposes includes, among other things, the donor's or the decedent's spouse or registered partner, any heir in lineal ascent or descent and any heir of the spouse in lineal descent. As a general rule, cohabitants come under tax bracket II, but they may come under tax bracket I, for example, if they have been married earlier or have a child together.

may be obtained by skipping generations by willing or donating property to, for example, grandchildren.[8] Rights of possession are also frequently retained to lower the valuation of the donated property and hence the payable gift tax.

There are, however, rules aimed at curbing tax planning. Gifts received from the same donor during a three-year period are aggregated. Loans with no intention to be paid back and sales at less than 75 per cent of fair market value are subject to gift taxation. There is also an exception to the general rule, according to which the donee may use the gift tax value as the acquisition cost: if the donee disposes of the gift within one year from receipt, the acquisition cost will be the donor's original acquisition cost. In addition, in the case of inheritance taxation the value for inheritance tax purposes becomes the beneficiary's or heir's acquisition cost, but there is no one-year rule, such as the one in gift taxation.

The media regularly bring to the public's attention cases where people move abroad with the aim of avoiding gift or inheritance tax. Finland's neighbours Sweden and Norway, which levy neither inheritance nor gift tax, are particularly attractive from this point of view. However, among others, the tax provisions concerning Finnish real property and Finnish real estate holding companies place hurdles for such tax-planning strategies.

The Income Tax Act and the Inheritance and Gift Tax Act provide for relief for certain transactions that aim at passing a business or a farm to the next generation. The relief is implemented, for example, through favourable valuations in inheritance and gift taxation, non-taxation of capital gains, allowing sales at 50 per cent of fair market value without triggering gift taxation or longer tax payment times. The types of relief depend on the way in which the change of generation is carried out and on whether relief is granted under the Income Tax Act or the Inheritance and Gift Tax Act.

Relief is subject to various conditions, which include that at least 10 per cent of the activity is transferred and the activity is continued by the transferee after the transfer. A further sale of a company, farm or other business that has been transferred to the next generation in a transaction enjoying change of generation relief leads to forfeiture of the relief and to a penalty payment if the sale occurs within five years of the purchase agreement or the tax assessment in which the relief was granted. Recent case law shows an increasing tendency to grant the relief only to the extent the company's assets are related to its business activities and to deny relief to the extent the assets are personal investments in nature. The tax provisions on change of generation transactions are a politically highly sensitive topic in Finland.[9]

v Property and transfer taxes

Owners of real property pay real estate tax, which is typically around 1 per cent of the value of the real estate per year. When acquiring real estate, a transfer tax of 4 per cent is payable by the purchaser. The transfer tax rate applicable to housing and real estate companies is 2 per cent, in which case the tax base also includes certain loans of the company, and 1.6 per cent for other shares. No transfer tax is generally payable on listed shares or assets received as a gift or inheritance.

8 Wills may be, partially because of their flexibility, an attractive tool for inheritance tax planning. For example, suspensive conditions that give ownership rights to the beneficiary only after certain conditions are fulfilled have been used to create an interim ownerless period and thus defer the payment of inheritance tax. This strategy has obvious pitfalls.

9 One common argument against taxes on inheritances is that they endanger the prerequisites to continue a business, especially where the transferred business has no liquid assets that could be used to pay the tax due.

III SUCCESSION

i Legal implications of marriage, registered partnership and cohabitation

Marriages and registered partnerships have almost identical legal effects, the main differences being that the possibilities to take the other partner's last name and adoption are more limited in registered partnerships. Cohabitation, in turn, does not create any immediate legal rights or obligations. The possibility to conclude new registered partnerships ended in March 2017, when legislation allowing same-sex marriages entered into force. Existing registered partnerships can now be turned into marriages with a notification.[10]

Marriage does not cause changes in the ownership of property. Nor is there liability for debt taken by the other spouse, but there may be joint liability for debt taken for the maintenance of the family. The common home is protected by requiring both spouses' consent to its sale, even where owned by one spouse alone.

A petition for divorce may be filed by the spouses jointly or by only one of them. The reasons for divorce are not examined. Upon granting a divorce, normally after a reconsideration period of six months, one of the spouses may be ordered to pay maintenance to the other spouse, if deemed equitable.[11]

At divorce, the net marital property is totalled and divided into two, to determine the share of each spouse. The spouse with less property receives an equalisation payment, which is tax-exempt, from the other spouse so that each spouse leaves the marriage with the same amount of what used to be matrimonial property.

However, prenuptial agreements cover around a third of all marriages and they frequently entirely remove the duty to make equalisation payments. Some flexibility as to how a prenuptial agreement is drafted is allowed and it is, for example, quite common to provide that the agreement shall apply only at divorce (but not death of a spouse) or that the prenuptial agreement only affects property accumulated before the marriage. To be effective, a prenuptial agreement must be concluded in writing, dated, signed, attested and registered by the local register office.

ii Intestacy and wills

Finland is a signatory of the Nordic Convention of 19 November 1934 concerning Inheritance, Testamentary Dispositions and the Administration of Estates of Deceased Persons between Denmark, Finland, Iceland, Norway and Sweden. In 1976, Finland joined the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

As an EU Member State, Regulation No. 650/2012 on international successions is of particular importance for Finland. This Regulation governs issues such as applicable law, recognition and enforcement of decisions and the creation of a European certificate of succession. It brings more choice, simplicity and clarity to cross-border successions and is binding on most EU Member States.[12]

The EU regulations concerning the wealth relations of international couples, the Matrimonial Property Regulation (Council Regulation (EU) 2016/1103) and the Registered

10 Because of significant similarities, references to marriage in this text also apply to registered partnerships.
11 Since 2011, there is a somewhat limited possibility to receive compensation also upon a cohabitation separation if one partner has assisted the other in accumulating property over a long period.
12 Denmark and Ireland do not participate in the Regulation.

partnerships Property Regulation (Council Regulation (EU) 2016/1104), have also been applied in Finland since 29 January 2019.[13] The Regulations are intended to make life easier, for example, for married and registered partnership couples who are nationals of different countries and have lived in different countries. The couples may agree on united rules on which state's law will apply to the division of property upon divorce or demise of the other spouse. The provisions of the regulations on applicable law apply only to persons who are married, have registered their partnership, or entered into a choice of law agreement on or after 29 January 2019.

In some situations, gifts and other payments received during the decedent's lifetime are taken into consideration in determining the size of the estate to be distributed. After a married person passes away, a division of property is carried out between the spouses. Thus, if the decedent's net assets exceed the net assets of the surviving spouse, the death estate makes an equalisation payment to the surviving spouse. No inheritance or gift tax is due on equalisation payments. A surviving spouse with more net assets than the decedent may decide not to make an equalisation payment to the estate of the deceased person. No division of property is carried out if the spouses' marital rights in each other's property have been removed through a prenuptial agreement.

In the case of intestacy, the children inherit the whole estate even if the decedent was married. If there is no spouse and there are no children, the parents inherit everything, and if there are no living parents, the decedent's brothers and sisters inherit.

A will can be used as a tool to choose the heirs and give them either a share of an estate or a legacy. As a main rule, for a will to be effective, it has to be made in writing and signed in the presence of two witnesses. Direct descendants are protected by a forced heirship regime that gives them the right to claim a reserved portion that equals half of the share that they would have received absent the will. The surviving spouse is protected almost invariably through retention of possession (but not ownership) of the undivided common home.

IV WEALTH STRUCTURING AND REGULATION

i Wealth structuring vehicles

Finnish law does not recognise the common law institution of the trust. There is, however, some case law, for example, regarding foreign trusts and their treatment in Finnish taxation. Trusts may cause a variety of substantial tax risks in Finland, such as CFC taxation and income, gift or inheritance tax for beneficiaries, sometimes even before receipt of any actual payments from the trust. The undeveloped Finnish case law on trusts and the varying features of trusts underline the need for a case-by-case analysis.

In addition, the use of foundations for wealth structuring purposes is very limited, because foundations are typically required to have a charitable purpose and they are subject to strict supervision enforced with even criminal sanctions. Limited partnerships, on the other hand, are mainly used by private equity investors and in other circumstances where the features of a transparent entity are desirable.

Thus, the most common vehicle for wealth structuring remains the limited liability company. As the taxation of dividends in the hands of an individual shareholder is affected by the value of the dividend-distributing company's net assets, accumulating property in a

13 All EU countries do not participate in the Regulation.

limited liability company is often advantageous from a tax perspective.[14] Setting up a limited liability company is very straightforward and, as of July 2019, there is no required minimum incorporation capital. At least one member of the board has to reside within the EU or the EEA, unless a special permission is granted.

Another reason why corporations are an attractive vehicle for accumulating wealth is that invoicing through personal service companies or holding companies, especially in the field of professional services, may to some extent be used as an alternative to receiving the same amount of income as wages. As discussed above, earned income is taxed at rates of up to approximately 55 per cent, whereas the tax burden when charging through a corporation may be more modest – the corporate tax rate is 20 per cent and dividend distributions are often taxed at only 7.5 per cent. Depending on the circumstances, there might not even be a need to distribute dividends, resulting in ulterior tax savings.

Exit tax provisions introduced as of 2020 could trigger exit taxation, if managing the company from another country causes the company's residence to switch to that other country and Finland to lose the right to tax the company's assets. The February 2019 judgments of the Court of Justice of the European Union on the concept of beneficial ownership and misuse of EU law could limit the possibilities to utilise foreign intermediate holding companies (e.g., as vehicles for investment to Finland). Furthermore, as of 2021 corporate entities whose place of effective management is located in Finland are considered to have unlimited tax liability in Finland.

Legislative amendments aiming to better align the tax treatment of different forms of investment have been applied as of 2020. Among others, these amendments greatly reduced the attractiveness of insurance wrappers by, for example, abolishment of the possibility to withdraw invested capital without triggering taxation and complete forfeiture of tax deferral when the policy owner yields too close control over the underlying assets. For example, the explicit or implicit possibility to exercise voting rights in the underlying investment object or bypass the insurance company when giving purchase and sell orders (self-management) cause complete forfeiture of tax deferral.

As of 2020, Finnish contractual investment funds have to meet certain conditions related to, for example, a minimum number of unit holders and open-endedness to be tax-exempt. HNWIs, who tend to choose limited liability companies or insurance wrappers, rarely use Finnish investment funds as wealth structuring vehicles. For many HNWIs, foreign private funds could be a more attractive alternative, especially after the 2020 amendments.

ii Regulation of financial service providers and prevention of money laundering

Marketing and offering of financial products and services in Finland by investment firms, and fund managers of both UCITS (i.e., funds established under the EU Directive on Undertakings for Collective Investment in Transferable Securities) and alternative investment funds (i.e., funds governed under the EU Directive on alternative investment fund managers) require prior authorisation or registration with the Finnish Financial Supervisory Authority, which is also the supervising authority. When marketing is directed to non-professional

14 As noted above, the taxation of dividends in Finland is very complex. Another factor affecting the use of a Finnish holding company is that dividends from unlisted companies within the EU or EEA, regardless of ownership, and dividends from listed companies within the EU or EEA, subject to a holding requirement of at least 10 per cent, are generally tax-exempt. There are no similar exemptions if the shares are held by an individual personally.

investors (retail investors), certain additional requirements, such as the obligation to provide a key investor information document and the rules under the Consumer Protection Act, apply. The definition of a professional client under the Investment Services Act is based on the requirements set out in the EU Directive on Markets in Financial Instruments.

Finnish legislation on the prevention of money laundering is largely based on international standards, which include the EU's Anti-Money Laundering Directives, which are based on recommendations of the Financial Action Task Force. The 4th Anti-Money Laundering Directive was implemented into Finnish legislation by the recast Act on the Prevention of Money Laundering and Financing of Terrorism (AML Act) and the Act on the Financial Intelligence Unit. Finland has also transposed the 5th Anti-Money Laundering Directive into national law. Requirements under the AML Act apply to, inter alia, investment firms, fund managers, credit institutions and other entities offering financing in Finland. The duties include identification and verification of customers, ongoing monitoring of customer relationships, record-keeping, detecting and analysing suspicious transactions and reporting suspicious transactions to the Financial Intelligence Unit, which operates in connection with the National Bureau of Investigation. Violations are subject to administrative and criminal sanctions, and negligence towards the obligations may lead to corporate criminal liability and criminal liability for individual employees. Money laundering offences are sanctioned in the Penal Code.

V OUTLOOK AND CONCLUSIONS

The continuous increase in the exchange of information is a clear trend in Finland. The Finnish authorities are receiving a substantial amount of information from international exchange of information arrangements, and this flow of information leads frequently to investigations concerning the taxpayers affected. In the absence of an effective voluntary disclosure policy, it has been less popular among Finnish taxpayers to disclose unreported overseas assets on a voluntary basis. In addition, the DAC6 rules on mandatory disclosure sets an obligation for taxpayers and intermediaries to report especially tax-driven cross-border arrangements. The first exchange of information took place in late 2020. Attorney–client privilege could exempt tax advisers that are attorneys from mandatory disclosure requirements.

In 2021, Finland introduced, as the first country in the world, the OECD TRACE system. TRACE is a procedure for granting tax treaty benefits at payment of dividends, which are distributed on publicly listed companies' nominee-registered shares with non-resident taxpayers as beneficiaries. It seems that tax treaty benefits are granted more narrowly at payment because of ambiguous guidance and foreign registered intermediaries' tax liabilities and registration requirements. This may cause a spike in the number of tax refund applications, further prolonging handling times and making investment into Finnish publicly listed companies less attractive.

As far as tax planning is concerned, generation-shift reliefs, as well as holding company and personal service company arrangements, may present attractive opportunities, but careful planning is essential as tax planning is becoming less tolerated than before. The GAAR is being interpreted ever more broadly and new measures against tax planning are being introduced. OECD Base Erosion and Profit Shifting proposals and EU legislation against tax avoidance and aggressive tax planning, chiefly ATAD and ATAD II, have recently been implemented. The tax treatment of different forms of investment has been aligned as of 2020, limiting, for example, the tax benefits of insurance wrappers. As ever-fewer tax planning alternatives remain available and, for example, because Finland levies gift and inheritance tax, moving abroad may at present be a relatively effective planning strategy. Furthermore, there has been a growing trend to pursue criminal prosecution for tax fraud instead of imposing tax increases. Due to the *ne bis in idem* principle, tax increases and criminal penalties cannot be imposed simultaneously.

There has been a small shift from taxation of income to taxation of consumption and the new government has signalled that this will continue to be the emphasis. Due to the impact that the covid-19 pandemic has had on Finland's state budget, the government is also under pressure to increase the overall tax burden. Above all, the new government has signalled a strong appetite to tackle tax planning with measures that could be difficult to foresee. What is clear is that Finland will remain a high-tax jurisdiction for individuals, but other factors for which Finland is well known, such as institutional stability, low levels of corruption, good education and a clean environment, are also likely to stay.

Appendix 1

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