

Finnish CFC legislation

The Finnish CFC legislation (Legislation on Controlled Foreign Companies, 16.12.1994/1217) is not wholly consistent with the decision of European Court of Justice (ECJ) on the case of Cadbury Schweppes (C-196/04). Currently the CFC legislation is applied together with the Publication of the National Board of Taxes (696/37/2007, 16.5.2007).

There is a draft of proposed amendments of the Finnish CFC legislation in order to harmonise it with the guidelines justified by ECJ on the Cadbury Schweppes case (bill 74/2008). New provisions are planned to be applied from the beginning of the year 2009.

The most relevant provisions on the Finnish CFC legislation are described below.

The profits of a foreign company in which a Finnish resident company or individual owns a holding of more than 10% are attributed to the resident company or individual and subjected to tax in Finland, where the corporation tax in the foreign country is less than 3/5 of the rate applicable in Finland. The requirement of holding is proposed to be raised from 10% to 25% of the equity. The Finnish resident company or individual receives a tax credit for the tax paid by the CFC.

According to the new provisions CFC legislation will be applicable also to permanent establishments, where they are resident in another country than the CFC and provided they are not subjected to tax in the resident country of the CFC.

The CFC legislation is currently excluded only from certain branches of business, inter alia industrial production activities. The applicability of the CFC legislation is proposed to be specified in accordance with the ECJ ruling on the Cadbury Schweppes case.

An EEA resident company as well as a company resident in a tax treaty country will be excluded from the CFC legislation, where the foreign company physically exists and carries on genuine economic activities in the resident country. The physical existence is evaluated in terms of premises, staff and equipment. Only wholly artificial arrangements within EEA and tax treaty countries will be included in the CFC legislation.

According to the bill 74/2008 it is uncertain how the CFC legislation will be applied to holding companies resident in EEA or tax treaty countries, as a holding company might need only minor physical existence in its resident country.

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