

PARTIAL DEMERGER AS AN EFFECTIVE TAX PLANNING TOOL

The Supreme Administrative Court has recently in its decision (KHO:2010:9) upheld the ruling of the Finnish Central Board of Taxation, according to which shares in a subsidiary may qualify as an independent business unit in connection with a partial demerger of the parent entity. Accordingly, the decision facilitates a tax-neutral transfer of shares in a subsidiary to another entity by way of a partial demerger. In the decision, importance was especially given to the fact the business purpose of the subsidiary was different from that of the parent entity and that the subsidiary also otherwise was able to operate on its own both from an organizational and from a financial perspective.

A partial demerger may therefore prove to be a very useful tool to restructure, for example, group holdings without any immediate tax consequences.

LOSSES DEDUCTIBLE IN CERTAIN PRIVATE EQUITY STRUCTURES

The Supreme Administrative Court has recently rendered a decision (KHO:2010:12), according to which a holding company set up mainly by private equity investors may still be deemed as a company engaged in private equity activities. In an earlier decision from 2009 (KHO:2009:64), the Supreme Administrative Court took the opposite view, thus removing the private equity status of a holding company and rendering the losses arising from the liquidation of its subsidiary non-deductible for tax purposes.

Contrary to the earlier case – where the holding company had no employees and carried no active business activities and where the intention was to liquidate the target (subsidiary) company immediately after the transaction – the holding company employed in this particular case four employees providing group internal and private equity services, but apparently most importantly, had also held its underlying subsidiaries for a longer period of time. In these circumstances, the Supreme Administrative Court considered the holding company eligible for the private equity status, which accordingly made the goodwill included in the purchase price of its Finnish subsidiaries deductible for tax purposes upon the liquidation of the subsidiaries in question.

The ruling of the Supreme Administrative Court clarifies to some extent the private equity concept. Private equity structures should now be carefully scrutinized to determine their tax efficiency.

The contents of this update do not constitute legal advice and should not be relied upon.

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