Energy Overview

Finland has one of the lowest levels of reliance on fossil fuels among International Energy Agency member countries. This is due to substantial domestic production of renewable energy (primarily from forestry solid biomass, hydro and wind power) and the presence of several nuclear plants. In 2021, 86% of Finland's electricity production was derived from renewables and nuclear energy, with renewable sources contributing 53% to the country's electricity production.

Finland has no domestic fossil fuel production, and all supplies of crude oil, natural gas, and coal are imported. The energy intensity of the economy and per capita energy consumption are both high, attributable to the country's sizeable heavy industry sector and the significant heating demand imposed by its cold climate.

Regarding energy sector trends, solar power production in Finland has seen a marked increase in recent years. Additionally, there is growing interest in investments in electricity storage projects, as energy storage capacity is essential for balancing weather-dependent electricity production.

Finland is also remarkably active in the entire battery supply chain, from mining and processing raw materials to manufacturing batteries and charging technologies.

Moreover, the Finnish Government is preparing a new law to regulate offshore wind power in Finland's exclusive economic zone (EEZ). The draft of the law proposal is expected to be published in May 2024. In terms of nuclear energy, small and modular reactors (SMRs) are being considered as an alternative to fossil fuels, prompting the Finnish Government to reform the Nuclear Energy Act to enable the construction of SMRs.

According to Finland's Climate Act, the country should achieve carbon neutrality by 2035. To reach this target, Finland plans to significantly increase renewable energy production, including onshore and offshore wind power. Wood fuels are expected to play a crucial role in reducing fossil fuel use in the near term, but in the long run, the government aims to transition to non-combustion-based heating and cooling systems, such as heat pumps, waste heat recovery, and geothermal energy. The Finnish Government intends to incentivize new renewable energy investments to attract energy-intensive green transition investments.

Tax Overview

Tax residency – Finnish limited liability companies are Finnish tax residents purely as a result of having been incorporated in Finland, and thus, are separately liable to Finnish income tax. Further, corporate entities whose place of effective management is located in Finland are also considered resident taxpayers in Finland.

A Finnish limited partnership is treated as a flow-through entity for Finnish taxation purposes, meaning that the partnership as such is not a separate taxpayer, i.e., the partnership itself will not be subject to corporate taxation. However, the partnership is treated as an accounting and tax calculation unit required to file a tax return.

Tax rates – the Finnish Corporate Income Tax ("CIT") rate is a flat 20%. Finland has implemented the EU VAT Directive, and the standard rate of VAT as of September 2024 is proposed to be 25.5% (until then 24%). However, two reduced VAT rates (14% and 10%) are applied to certain goods and services, in addition to the goods and services entirely exempted from VAT.

Finland also imposes a withholding tax on various payments, especially dividends and royalties, made by Finnish residents to non-residents. Base rates are 20% for corporations and 30% for individuals The WHT levied is more often than not mitigated by the extensive double tax treaty ("DTT") network or EU-level exemptions, mainly the Parent-Subsidiary Directive and the Interest and Royalties directive.

According to domestic law, interest paid to a non-resident is usually exempt from WHT in Finland. See also below notes for debt pushdown and interest deduction limitations.

Determination of taxable income - income recognition in taxation is generally aligned with accounting, i.e., on an accrual basis. In practice, the key differences between taxation and accounting profit calculations concern depreciations and interest deductions.

Group taxation - corporations are taxed separately under Finnish tax regime. However, the Finnish group contribution regime allows, under certain conditions, Finnish group companies and Finnish permanent establishments to offset their profits and losses.

Finland has an advanced transfer pricing regime, which is largely consistent with the OECD Transfer Pricing Guidelines. Pre-emptive proceedings, including Advance Pricing Agreements ("APAs"), are frequently utilised.

Specific tax items – further to CIT and VAT, Finland also levies:

Real Estate Tax on owners of Finnish real estate (land area and buildings). The applicable tax rate depends on the nature and location of the property. Current general real estate tax rate differs between 1.30% and 2% and for certain power-plants amounts up to 3.1%. The real estate tax rules are currently being revised.

Transfer Tax of 1.5% for non-listed securities and 3.0% for Finnish directly owned real estate is levied in connection to transfer of ownership. A transfer between non-residents is exempted unless the target is a Finnish real estate or housing company. The purchaser is liable to pay the transfer tax and file atransfer tax return to the Finnish Tax Administration.

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Taxation of Energy Projects

General - Finnish energy projects are typically structured within limited liability companies, offering a liability shield for investors. Partnerships may be utilised in a financing context, most often as fund vehicles. Finland has effective tax consolidation between corporations under the Group Contribution regime.

Financing – given the typical capital-intensive nature of energy projects, the structuring of the financing is of particular importance. There are several aspects impacting the taxation of the financing structure, however, in general Finland offers an efficient framework for leveraged investments:

Interest deduction limitations: Finland has adopted Anti-Tax Avoidance Directive based interest deduction limitations with the following key characteristics.

- Interest deduction limitations are applied if the taxpayer's net interest expenses exceed €500k
- In this case deductibility of net interest expenses is limited to 25% of tax EBITD
- However, net interests paid to non-related parties are always deductible up to €3m and prioritised within the 25% EBITD quota
- There are specific complex exemptions available e.g. for certain infrastructure projects and based on comparative debt/equity ratios
- Disallowed interest deductions may be carried forward indefinitely and deducted within the limitations in following tax years

Transfer pricing rules: Finland has no formal thin capitalization regulation in force and generally i.e. the debt/equity ratio of Finnish companies is not restricted as far as it can be shown to be at arm's length. Especially in cases of significant leverage, a debt capacity analysis is recommended to support the arm's length debt/equity ratio.

Debt pushdown: for most acquisitions, the preferred means to push down debt in the structure is the usage of a Finnish Special Purpose Vehicle ("SPV"). Following the (share) acquisition, the target's profits may be offset against the SPV's interest expenses under Finnish group contribution rules. Debt pushdown has generally been accepted in connection with 3rd party acquisitions, however, detailed case-by-case analysis is always required to avoid triggering the anti-avoidance provisions.

Other considerations – Finland has a relatively restricted Participation Exemption regime for capital gains, meaning that Finnish corporate shareholders can make tax-exempt divestments only under limited circumstances.

Further, there are specific provisions regarding Finnish companies holding significant real property. Capital gains derived from disposals of these real estate rich companies may be taxable in Finland also for non-residents, depending on the relevant DTT provisions. Also, specific transfer tax rules apply to real estate companies.

Other Tax Issues To Be Considered

Temporary green investment incentive

In April 2024, the Finnish Government announced a new tax credit for substantial green industrial investments. The temporary new tax credit prepared by the Government appears to be well aligned with the EU's Temporary Crisis Framework, where the EU has relaxed its State aid policy to boost green investments. The EU's Temporary Crisis Framework allows Member States to grant aid to incentivise accelerated investments in sectors strategic for the transition towards a net-zero economy, such as battery and hydrogen projects and the fossil-free steel industry. This aid, which may take the form of tax relief, can reach up to EUR 150 million per project– a provision that is consistent with Finland's investment climate and ambitions to become a central hub for net-zero ecosystems.

The proposed tax credit is preliminarily designed to be 20 per cent of the total investment cost, subject to a ceiling of EUR 150 million per project, in accordance with the EU's framework. It will be available for new investment projects that are resolved upon by the end of 2025 with the tax reduction applicable no earlier than 2028, thus establishing a unique funding mechanism for the state. The legislative process is underway to define the technical requirements and details of the tax credit.

Finnish R&D incentive

Finland also has a separate R&D cost driven tax incentive. The incentive is an additional tax deduction by nature, allowing for multiplied tax deductions determined based on the taxpayer's annual R&D expenses.

The deduction consists of a general additional deduction amounting to 50 percent of the actual qualifying R&D expenses. The applicable minimum threshold is €5k for the tax year, with a corresponding maximum of €500k.

Further, the incentive includes an extra additional deduction component, based on a year-on-year growth of the taxpayer's R&D expenses. The extra additional deduction amounts to 45 per cent of the growth in actual qualifying R&D expenses. The extra deduction has no minimum threshold but a maximum of €500k.

The incentive is a general tax incentive, available to all tax taxpayers engaged in R&D related business activities regardless of their form of business. The incentive is calculated on an entity-level, i.e., several group entities may claim be benefit simultaneously.

Excise duties

In Finland, a range of excise duties are imposed on the consumption and sale of specific goods that are either produced or imported within the country. This includes both national excise taxes on items like waste, as well as EU-harmonized excise duties. Within the energy sector, harmonized duties extend to electricity and select fuels, encompassing coal, natural gas, fuel peat, and pine oil.

A reduced electricity excise duty rate applies to electricity that is separately metered and utilized for industrial production, data centre operations, and professional greenhouse horticulture.

Relevant Experience

Borenius (Taxand Finland) regularly advises clients of Finland's largest and most groundbreaking energy projects. Below we have listed certain recent engagement highlights in the energy sector where we advised:

- Neoen on the acquisition of Lumivaara wind farm in Finland from Prokon, and the formation of a joint venture regarding the wind farm between Neoen and Prokon. The parties entered into a new power purchase agreement with Equinix that covers the majority of the output of the Lumivaara wind farm.
- Neoen and Prokon in the project financing of a Finnish onshore wind farm portfolio. We acted as the local counsel in the approx. EURm 220 project financing of a Finnish onshore wind farm portfolio.
- Keliber when the company signed an investment agreement on bridge financing of EURm 40 with Sibanye Stillwater Limited. The arrangement enables Keliber to significantly advance its lithium project in Finland.
- The State of Finland on the EURb 2.35 bridge financing for Fortum. Fortum is one of the largest energy companies in northern Europe and a fundamental part of the Finnish national energy production system. Our multi-disciplinary team advised the State of Finland on all aspects of the transaction.
- Deutsche Anlagen-Leasing on the project financing of Finland's first major ground-mounted PV system, developed by CPC Finland Oy and based on a PPA with Neste for its Porvoo refinery, a global technology leader in sustainable fuels and chemicals.
- Renewable Power Capital Limited (RPC) in forming a joint venture with Aurinkokarhu Oy to co-develop up to 1 GW of solar PV projects in Finland, marking RPC's first Finnish solar investment.
- Fingrid, Finland's transmission system operator, in a real estate tax dispute regarding a reserve power plant, successfully arguing through all appellate levels. The Finnish Supreme Administrative Court issued a landmark precedent in June 2021, ruling in favor of Fingrid that non-commercial reserve power plants should be taxed at the general real estate tax rate rather than the higher rate for commercial power plants. This decision sets a significant precedent for the interpretation of Finnish real estate tax law.

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