National Board of Taxes
NB: Unofficial translation

Act on the taxation of shareholders in Controlled foreign companies (CFCs) of 16 December 1994 (1217/1994)

§ 1
Scope of application

The share in the CFC's income outlined below, in the provisions of this Act, shall be considered taxable income in the hands of a Finnish tax resident.

§ 2
Definition of a Controlled foreign company (CFC)

For the purposes of this Act, a CFC is defined as a corporate body, in its foreign country of residence placed under the ownership and control of Finnish tax residents, and liable there to less than 3/5 of the corresponding Finnish level of income taxation than if it were a Finnish corporate body.

Notwithstanding the above, the following entities are not deemed CFCs:

(1) A corporate body whose income is mainly derived from industrial activity, any other comparable production activity or shipping business in their country of residence; a corporate body whose income is mainly derived from sales and marketing activity, which directly serve a corporate body conducting one of these (three) areas of activity and which is mainly directed to the territory of the country of residence; a corporate body whose income is mainly derived from payments made by a limited company within the same group (within the meaning of Chpt. 1, § 3, Companies Act (734/1978), which is a resident in the same country as the corporate body in question, and conducts, in that country, one of the industrial activities mentioned in the preceding paragraph;

(2) A corporate body resident in a country with which Finland has a double tax treaty in force and assuming that: The corporate body is a resident of that country under the tax treaty and the treaty is applicable to its profits; and

corporate bodies are liable to pay an income tax in that country which does not substantially deviate from the corporate income tax which corporate bodies must pay in Finland, and the corporate body in question has not profited from any specific tax relief legislation of that country. (1091/1998)

For the purposes of comparison, calculations (that determine whether the level of income taxation in the CFC's country of residence is less than 3/5 of the level of income taxation in Finland) shall not include a receipt of dividend from another CFC, if this dividend was distributed from the profits, which had been included in Finland in the calculation of the actual tax of the CFC paying out the dividend, for the five tax years immediately preceding the distribution. (1091/1998)

In reference to the provisions of the subparagraph 2 above, in spite of a double tax treaty, the income tax of a CFC is considered substantially lower than Finnish income tax if the corporate bodies in this country, on the basis of its legislation, are liable to pay to the State or its part an income tax, the actual and total amount of which, on the average, is significantly lower that the actual income tax paid by corporate bodies in Finland.

§ 3
Definition of ownership and control

A foreign corporate body is regarded as being under the ownership and control of a Finnish tax resident, in reference to § 2, subparagraph 1, if one or several resident shareholders directly or indirectly own at least 50 per cent of the capital of or the voting rights in the CFC or they are entitled to at least 50 per cent of the yield of the net wealth of the CFC.

§ 4
Taxable income

The taxable income is the share of the CFC's profits that corresponds to the above-mentioned ownership interest of the shareholder (together with associates) in the CFC, if this share is at least 10 per cent. In reference to § 2, subparagraph 3, taxable income does not include receipts of dividends that already have been taken into account. (1091/1998)

In reference to the above provision in subparagraph 1 of this section, dividends and other distributions received by the shareholder are taxable in so far as they exceed the amount of profits that in the same year or five preceding years has been included in the taxable income of the shareholder.

§ 5

The right to deduct losses

The shareholder's share of the CFC's loss is carried forward for five tax years but it may be set off only against the shareholder's share of taxable income, which is derived from the CFC.

§ 6

Giving credit for foreign taxes

Credit is given for the foreign state income taxes paid by the CFC on the same income.

Where a double tax treaty is in force between Finland and the state of residence of the CFC, credit is given for no more than the taxes that would have been credited if the taxpayer had paid them. The tax, which exceeds tax actually paid, is not credited (matching credit or tax sparing credit is excluded).

The credit, as defined above in subparagraph 1 and subparagraph 2, is limited to the amount of Finnish taxes on the same income.

§ 7

Information-reporting requirement

When filing his income tax returns, the Finnish tax resident is liable to include reports concerning the CFC, as specifically instructed by the Ministry of Finance. (1572/1995)

§ 8

Entry into force

This Act will enter into force on 1 January 1995, and will be applicable for the first time to the tax assessment for the 1995 taxable year.