

Unofficial translation of suggested amendments to legislation as per government proposal HE 282/2018

Laki

rajoitetusti verovelvollisen tulon verottamisesta annetun lain muuttamisesta (Often referred to in English as the *Act on the Taxation of Nonresidents' Income*)

Eduskunnan päätöksen mukaisesti

muutetaan rajoitetusti verovelvollisen tulon verottamisesta annetun lain (627/1978) 10 b—
10 e §, sellaisina kuin ne ovat, 10 b § laeissa 970/2005 ja 510/2010, 10 c ja 10 d § laissa
970/2005 sekä 10 e § laissa 1226/2006, ja
lisätään 7 §:ään, sellaisena kuin se on laeissa 1516/2011, 1240/2013 ja 975/2014, uusi 2
momentti sekä lakiin uusi 10 f § seuraavasti:

Section 7

By derogation from the provisions of subsection 1, the payor must withhold 35 percent tax at source on any dividends paid from a publicly listed company to nominee registered shares, if the payor or authorised intermediary does not have information on the beneficiary as referred to in § 15 e, Act on Assessment Procedure.

Section 10 b

By derogation of what § 7, subsec. 1 and § 10, subsec. 1 provide, the provisions of the present "10b" section are applied when dividends are paid by a publicly listed company (as defined in § 33a, Income Tax Act) to nominee-registered shares.

When dividends are paid, the provisions of an international treaty (as defined in § 1, subsec. 3) can be applied if the payor or the authorised intermediary closest to the beneficiary – registered in the Register of Authorised Intermediaries referred to in § 10 d – has obtained satisfactory facts about the beneficiary's country of residence and has ascertained that the provisions on dividends of an international treaty can be applied to the beneficiary.

Tax can be withheld, as provided for in subsec. 2, without regard to the circumstance that the nearest intermediary is not registered in the Register of Authorised Intermediaries (§ 10 d), if an authorised intermediary has undertaken to provide the dividend beneficiary's information to the authorities and has ascertained that the conditions listed in subsec. 2 are fulfilled. If authorised intermediaries undertake to give the authorities information originating from a non-registered intermediary, the authorised intermediaries are treated as having assumed responsibility for the authenticity of the information provided.

Acceptable ways to ascertain the facts about the beneficiary's country of residence (under subsec. 2 above) are: a tax-at-source card issued by the Finnish Tax Administration, a certificate issued by the tax authority of the beneficiary's country of residence, or an Investor Self-Declaration, which contains the necessary information for imposing tax at source on dividend beneficiary. The Investor Self-Declaration must be backed up by sufficient documentation, and its contents must not be contradictory to the authorised intermediary's other knowledge and information of the dividend beneficiary. The Finnish Tax Administration will later release further instructions as to the contents, period of validity, and what procedures must be followed when verifying the reliability of the declaration.

Section 10 c

Authorised intermediaries who are registered in the Register of Authorised Intermediaries as referred to in § 10 d below must, in accordance with the provisions of § 10 b,

ascertain who the beneficiary is and be able to recognize the beneficiary's identity, find out what their country of residence is for tax purposes, and make sure that the provisions on dividends of an international treaty can be applied to the dividend beneficiary.

Authorised intermediaries must file annual information returns to the Tax Administration as required by § 15 e, Act on Assessment Procedure, give the specific information about dividends as demanded by the Tax Administration as required by § 19, Act on Assessment Procedure, and give the information referred to in § 23 b, Act on Assessment Procedure when prompted by the Tax Administration or when required to do so for purposes of auditing. In addition, authorised intermediaries must, when asked by the payor of the dividends, give the payor the necessary information that they need in order to meet their tax obligations.

If an authorised intermediary has reported a lower amount of tax-at-source to be withheld on dividends than the applicable amount defined in § 7, subsection 2, the authorised intermediary is held accountable for the deficit that was not collected from the taxpayer due to such an erroneous report, as if this uncollected tax were a tax imposed on the authorised intermediary itself. In order to be relieved from this accountability, the authorised intermediary must show proof that the error is not due to any neglect by the authorised intermediary. The authorised intermediary is not responsible for any uncollected tax if it can show proof that it has sent corresponding information for the dividend payment and for withholding the tax-at-source to the next authorised intermediary or the issuer, as it has received the information from another authorised intermediary. Authorised Intermediaries are generally accountable for any tax that must be collected even after their registration is no longer valid.

It is, in reference to subsection 2 above, that the authorised intermediary is accountable for any tax at source that has not been withheld on paid out dividends, if the authorised intermediary has given or transmitted the annual information returns of the dividends and withholding in question, or if it has otherwise become clear that the reason for non-withholding of tax at source was an erroneous report given by the authorised intermediary or negligence on the part of the authorised intermediary. In order to be relieved of this accountability, the authorised intermediary must show proof that the error is not due to any neglect by the authorised intermediary.

The tax authority will impose on the dividend payor and authorised intermediary, in accordance with the provisions of the Act on Assessment Procedure for Self-Assessed Taxes, the tax at source that was not withheld in circumstances referred to by subsec. 2 above. In the same way, the tax authority will apply the provisions on charges for negligence on the authorised intermediary as per the Act on Assessment Procedure for Self-Assessed Taxes, as well as the provisions on how taxes imposed by the Tax Administration must be paid up, and the provisions on how to make an appeal against a decision.

Section 10 d

The "authorised intermediary" term refers to an intermediary, such as a custodian bank, with a currently valid registration in the Tax Administration's Register of Authorised Intermediaries. The Finnish Tax Administration enters the name of an intermediary into the Register, on request, provided that the requesting party is one who has the right to operate custodian activity, under the following Finnish acts: no 747/2012, no 348/2017, no 827/1991 or no (750/2012) or has the right to operate custodian activity under comparable legislation of another country.

The intermediary must have a permit, issued by a competent public authority – that also supervises custodians' activities – of their country of residence to operate custodian activity. The intermediary's place of residence has to be in the European Union or in a country that has signed a tax treaty with

Finland for the avoidance of double taxation. It is also permissible for a branch established in such a country to become registered in the Register of Authorised Intermediaries, if such a branch carries out custodian activities and if it abides by the rules and regulations referred to above.

A further condition for registration is that the commonly accepted standard for the exchange of information or anti-money laundering rules and the rules on how to identify beneficiaries/customers are applied to the intermediary, along with other legal rules based on which the intermediary is under the obligation to check its customers' identities and ascertain that information on the customer's country of residence for tax purposes is known.

Intermediaries applying for registration, and those already registered as authorised intermediaries, must provide the information necessary for the register, and additionally provide a complete account of how they meet the conditions and requirements listed here. The Tax Administration also needs to be notified of any changes in the information.

If an appeal or claim must be made, the provisions of § 65 a, Act on Assessment Procedure, govern the making of appeals against the Tax Administration's decisions on registration and de-registration.

Section 10 e

De-registration from the Finnish Tax Administration's Register of Authorised Intermediaries must be effected if:

- (1) an intermediary asks for it;
 - (2) the conditions listed in § 10 d above are no longer being met;
 - (3) when the intermediary's administrative errors or other minor errors, have repeatedly led to taxes having been withheld incorrectly, or they have led to information being reported incorrectly;
- or
- (4) If the intermediary, otherwise than as referred to above in (3), does not comply with the provisions and obligations of § 10 c, or § 23 b, Act on Assessment Procedure, or does not pay the taxes that have been imposed on the intermediary.

It is permissible for the Tax Administration to refuse registration for an intermediary, if due to its previous neglect it is suspected that it will continue to not comply with the provisions and obligations of § 10 b and § 10 c or if it seems likely that it will not pay the taxes that will be imposed.

It is required of the Tax Administration to reserve an opportunity for the intermediary that under subsec. 1 and subsec. 2 above will be de-registered or refused registration, to provide its own account and explanation.

Section 10 f

Nonwage compensation (=trade income) within the meaning of § 25, Prepayment Act, is not subject to withholding of tax at source if the beneficiary:

- (1) shows the payor a tax-at-source card indicating that no tax must be withheld;
- (2) shows the payor another document, within the meaning of § 10, indicating that no tax must be withheld because an international treaty is applicable; or
- (3) has been entered in the Prepayment Register as referred to in § 25, Prepayment Act.

What is provided above under subsection 1, line 2, is not applicable to a nonwage compensation (=trade income) paid for the performance of work, entirely, or almost entirely, in Finland, as follows:

- (1) construction of buildings/houses, earthmoving, water works or other construction activities;
- (2) installation or assembly activities;

- (3) shipbuilding;
- (4) transportation;
- (5) cleaning sector, caregiving or medical nursing work.

This Act enters into force xxx x 20...

The provisions of § 7.2, § 10 b and § 10 c are applied to dividends paid on the 1st of January 2021 or thereafter.

Intermediaries can apply for registration into the Register of Authorised Intermediaries as per § 10 d on the 1st of July 2020 or thereafter. Registration into the Custodian Register will end on the 31st of December 2020.

2.

Laki **verotusmenettelystä annetun lain muuttamisesta**

(Often referred to in English as the Act on Assessment Procedure)

Eduskunnan päätöksen mukaisesti

muutetaan verotusmenettelystä annetun lain (1558/1995) 65 a §:n 6 momentin 3 kohta, sellaisena kuin se on laissa 15/2018, sekä

lisätään lakiin uusi 15 e § ja siitä lailla 772/2016 kumotun 23 b §:n tilalle uusi 23 b § seuraavasti:

Section 15 e

The information-reporting requirement for dividends paid to nominee-registered shares

Authorised intermediaries within the meaning of § 10 c of the Act on the Taxation of Nonresidents' Income (627/1978) must annually send the Tax Administration the necessary information for the tax assessment process. This requirement concerns the beneficial-owner information of the dividend beneficiaries for which the authorised intermediary has taken responsibility for, as well as information relating to how the dividends were transferred at the time of payment.

Dividend beneficial owner information consists of the amounts paid and the amounts withheld on dividend payments, to those beneficiaries for which the authorised intermediary has taken responsibility, and the identifying information on these clients such as their name, date of birth, address in the country of residence, tax identification number in the country of residence – given the beneficiary has one – and the legal entity type of beneficiaries that are legal persons. Additionally, the beneficiary's country of residence for tax purposes must be indicated, along with the beneficiary's home address, and other comparable details requested by the Tax Administration. The information on how the dividend is transferred at the time of payment must include the identifying information of those authorised intermediaries, whose dividend beneficiary information it has transferred further in the custody chain so that these can be reported by the issuer, as well as the identifying information on the authorised intermediary to which this information has been transferred to.

This information must also contain the reportable information of the transferred dividend amounts and taxes withheld.

The payor must fill out an annual information return that contains information on the dividend beneficiaries, and information on the authorised intermediary nearest to the beneficiary, from whom the information regarding the beneficiaries was received. If the payor does not have information on the dividend beneficiary when sending their annual information return, the payor must fill in the details of the intermediary nearest to the beneficiary, of whom the payor has knowledge. However, the country of residence to be reported must be the beneficiary's actual country of residence, provided that the payor knows it. In addition, information on whether the share, on the basis of which the dividend has been paid, is nominee-registered must be given, and information on whether the share is being managed for a client or for its owner's own account. The Tax Administration will issue more detailed instructions on the information to be reported, the time and method of reporting the information, and the right to refrain from reporting the information referred to in this Section, in situations that have minor financial or tax control relevance.

Section 23 b

The information-reporting requirement of an authorised intermediary

Authorised intermediaries within the meaning of § 10 c, Act on the Taxation of Nonresidents' Income must present the Tax Administration, when prompted on the basis of a dividend payment,

a dividend beneficiary or identifying information from a payor or another corresponding source, the following information: information on the mechanisms, procedures and documentation as well as any other information, on the basis of which it has fulfilled the requirements specified in § 15 e, in § 10 b, Act on the Taxation of Nonresidents' Income and in § 4 a, Prepayment Act, for recognizing and identifying the beneficiary, dealing with all the various obligations of reporting, ascertaining the authenticity of facts, etc., concerning those dividend payments for which the authorised intermediary has taken responsibility.

Section 65 a

Instructions for appeal against some of the decisions issued by the Tax Administration

The taxpayer and any other party whose amount of tax withheld is affected as a direct consequence of the decision, or a party accountable and responsible for the tax payment, and the Unit for the protection of tax recipients' interests and rights can submit appeals:

3) against a decision on entry into, or removal from, the Prepayment Register, within the meaning of § 25, Prepayment Act, or against a decision on entry or removal regarding the Register of Authorised Intermediaries within the meaning of § 10 d, Act on the Taxation of Nonresidents' Income;

This Act enters into force ××× × 20...

This act will be applicable on dividends paid on 1 January 2021 or thereafter.

3.

Laki **ennakkoperintälain muuttamisesta** **(Ennakkoperintälaki is often referred to in English as the Prepayment Act)**

Eduskunnan päätöksen mukaisesti
lisätään ennakkoperintälakiin (1118/1996) uusi 4 a § seuraavasti:

Section 4 a

Rules on derogation from the usual principle of reciprocity when dividends have been paid to nominee-registered shares

If the payor or the intermediary nearest to the beneficiary – registered at the time of dividend payment in the Register of Authorised Intermediaries referred to in § 10 d of the Act on the Taxation of Nonresidents' Income – does not receive, or cannot deliver, the beneficial owner information for dividends paid to nominee-registered shares referred to in § 15 e, Act on Assessment Procedure, the payor must withhold 50 percent tax if the beneficiary is a resident in Finland for tax purposes.

The provisions of § 10 c, subsec. 3 and subsec. 4 of the Act on the Taxation of Nonresidents' Income, and the provisions of the Act on Assessment Procedure for Self-Assessed Taxes on the authorised intermediary's responsibility for uncollected tax at source are to be applied, correspondingly, on any withholding that has not been made.

The provisions of § 51, subsection 3, Act on Assessment Procedure for Self-Assessed Taxes are not applied on tax at source imposed on the payor of the dividends or an authorised intermediary.

This Act enters into force xxx × 20...

This act will be applicable on dividends paid on 1 January 2020 or thereafter.

4.

Laki

oma-aloitteisten verojen verotusmenettelystä annetun lain muuttamisesta
(Often referred to in English as the Act on Assessment Procedure for Self-Assessed Taxes)

Eduskunnan päätöksen mukaisesti

lisätään oma-aloitteisten verojen verotusmenettelystä annettuun lakiin (768/2016) uusi
51 a § seuraavasti:

Chapter 8

Rules on how taxes are imposed and appealing a decision **Section 51 a**

Specific regulation regarding dividend payors and authorised intermediaries

If the Tax Administration has already imposed tax on the dividend payor, under the provisions of § 10 c, Act on the Taxation of Nonresidents' Income, such a tax must be removed by the Tax Administration itself (=ex officio), if the authorised intermediary has paid the required tax at source for the dividends concerned, or if the reasons for the imposition are no longer valid.

If the payor, who is responsible for withholding tax, has neglected to withhold tax as referred to in § 4 a, Prepayment Act, but tax at source has been withheld on the dividends paid out, the tax to be imposed on the payor and authorised intermediary must be adjusted so that the amount withheld as tax at source must be subtracted from the final amount of tax to be imposed.

Correspondingly, a similar adjustment must be made in circumstances where the party who should have withheld tax at source has neglected to do so – but an amount of (prepayment) tax was withheld from the dividends that were paid out.

This Act enters into force xxx x 20...

5.

Laki

verotustietojen julkisuudesta ja salassapidosta annetun lain 9 §:n muuttamisesta (legislation on the publicity and confidentiality of tax information)

Eduskunnan päätöksen mukaisesti

muutetaan verotustietojen julkisuudesta ja salassapidosta annetun lain (1346/1999) 9 §, sellaisena kuin se on laissa 971/2005, seuraavasti:

Section 9

Publicly disclosable information on the Register of Authorised Intermediaries

In reference to § 10 d, Act on the Taxation of Nonresidents' Income (627/1978), the information on the Register of Authorised Intermediaries open to public disclosure are: the name of the corporate entity, its Business ID, and its corresponding ID code issued in the foreign country, country of residence, address, and the period of validity for the registration.

This Act enters into force xxx x 20...