

Global Rewards Update: Finland – Finnish Supreme Administrative Court decision on the sourcing of stock option benefit in a cross-border case

July 2013

Background

The Supreme Administrative Court (SAC) made a decision on 16 May 2013 on the taxation of stock option income that changes the sourcing rules of stock option benefits in cross-border cases.

Finland has traditionally applied sourcing from grant to exercise, but the new decision changes the Finnish tax treatment in cross-border cases.

Ruling of the Supreme Administrative Court

According to the SAC, stock options are considered to be earned **from grant to vest**. This new approach is in line with the position taken in the OECD model tax convention commentary.

The case concerned a Finnish national who had been granted stock options in two different plans while he was working outside of Finland. As the individual had been regarded as a non-resident for Finnish tax purposes during the entire time between the grant and vest of the options and he did not perform any work in Finland during that period, none of the stock option gain was taxable in Finland irrespective of his tax status or work location after vest of the options.

With respect to the second plan, only the portion of the option gain that related to time the individual had worked in Finland between the grant and vest of the options was subject to tax in Finland.

The case concerned tax year 2006 so it is possible that the ruling may be referred to retrospectively.

We expect that the Finnish Tax Administration is likely to give more precise guidance on the new practice in the near future and we will provide a further update then.

Action

Companies should take note of the new sourcing guidelines for future exercises of stock options.

Deloitte can also provide guidance on whether tax savings may be achieved by appealing against prior years' tax assessments. Significant tax refunds may be available e.g. in cases where inbound assignees to Finland

have held stock options that have vested prior to arrival in Finland, but the exercise has occurred while working in Finland. In 2013, it is still possible to appeal against tax assessment for the year 2007 and onwards.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at globalequity@deloitte.com, and a global rewards consultant will contact you.

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