

## MEMORANDUM OF UNDERSTANDING

A Finnish delegation and a Russian delegation met in Helsinki, at the Ministry of Finance, on 13 April 2000 to discuss certain issues related to the interpretation and application of the Agreement between the Government of the Republic of Finland and the Government of the Russian Federation for the avoidance of double taxation with respect to taxes on income, signed at Helsinki on 4 May 1996 (hereinafter referred to as "the Agreement"), as agreed to be amended by a Protocol to amend the Agreement, initialled at Moscow on 2 February 1999.

The Finnish delegation was headed by Mr Hillel Skurnik, Director for International Tax Affairs, Ministry of Finance, while the Russian delegation was headed by Mr Sergei Kalinin, Deputy Head of International Tax Relations, Ministry of Finance of the Russian Federation. A complete list of the members of both delegations is attached to this Memorandum as an Annex.

The discussions resulted in the following common understanding on the issues dealt with:

### *1. With reference to Article 5, paragraph 2, of the Agreement*

Determination of a permanent establishment with regard to the extraction of natural resources

The provisions under which the contents of the term "permanent establishment" is determined include especially, in addition to a mine, an oil or gas well, or a quarry, also any other place of extraction of natural resources. Taking into account the structure and wording, it can be concluded that the reference to natural resources is to be interpreted as meaning that, i.a. the cutting and transportation of timber carried out by the purchaser does not of itself constitute a permanent establishment.

In the application of Article 5, paragraph 2, sub-paragraph f), the cutting and transportation of timber by a third person can constitute a permanent establishment only if the cutting and transportation activity meets the requirements of paragraph 1 of the Article.

### *2. With reference to Article 5, paragraph 3, of the Agreement*

a) Determination of the dates on which a building site or construction project, etc., begins and ends

A building site or construction, assembly or installation project or supervisory activities connected therewith come into existence from the date on which the contractor for the first time begins on-site work, including any on-site preparatory work, e.g. the first employee of the contractor arrives to the site with the immediate aim of commencing on-site employment, the first delivery of equipment or building materials arrives to the site, or a planning office for the work is installed on the site, whichever is the earliest.

A site or project or activities referred to above ends when the on-site work is completed, i.e. the work is taken over by the customer, or the work is disposed of or permanently abandoned. The guarantee period shall not be considered as part of the period of the site or project or activities, when determining whether a permanent establishment has come into existence.

When the projected construction period is less than twelve or eighteen months, as the case may be, but for reasons of *force majeure* or actions taken by the authorities of the Contracting State in which a building

site or construction, assembly or installation project or supervisory activities connected therewith are carried out, the final construction period exceeds twelve or eighteen months, respectively, computed from the date on which the site or project or activities began to the date on which they end under the rules laid down in this paragraph above, that extension of the period of time shall not be taken into account, when determining the life span of the site or project or activities, provided that the relevant competent authorities mutually agree to the existence of force majeure or an action referred above.

b) The concept of "factories, etc., or any other industrial buildings or structures"

The concept of "industrial buildings or structures" contains, e.g., factories, workshops and power stations. It also contains structures for the purposes of infrastructure, heating and civil engineering including dams, bridges and harbours, water purification plants and sewage treatment plants, solid waste handling plants, any road, railway, airport or similar construction and also buildings linked to those structures, any construction related to power production and transfer, as well as facilities for assembly, production, repair and storage or other facilities generating logistic services which relate to industrial activity.

The erection of factories, workshops, power stations, or any other industrial buildings or structures, may include the erection of facilities for office, administration and residence purposes, as well as other facilities which have the purpose of promoting industrial activity, but the construction volume (m<sup>3</sup>) of those facilities shall not exceed 50 per cent of the total construction volume (m<sup>3</sup>) of the project or the building.

### *3. With reference to Article 7, paragraphs 1 to 3, of the Agreement*

The allocation of profits to a building site or construction, etc., project

In the Contracting State in which a building site or construction, assembly or installation project or supervisory activities connected therewith are carried out, only that part of the profits of the enterprise shall be attributed to such permanent establishment which are the result of the business functions actually performed by the permanent establishment in respect of the site, project or activities. In particular, with regard to contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, the profits attributable to the permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of such part of the contract that is effectively carried out by the permanent establishment in the Contracting State in which the permanent establishment is situated.

Profits derived from planning, design, engineering or research or from technical services which a resident of a Contracting State performs outside of the Contracting State in which the permanent establishment is situated shall not be attributed to that permanent establishment, even if those activities or services are connected with the business of that permanent establishment.

### *4. With reference to Article 22*

Withholding tax

Each Contracting State shall endeavour to establish procedures to enable taxpayers to receive income without the imposition of withholding taxes where the Agreement provides for taxation only in the State of residence. Where the Agreement provides for taxation in the State where the income arises, each State shall endeavour to establish procedures to enable taxpayers to receive income after deduction of tax at the rate provided for in the Agreement. Where a claim is made by a taxpayer, a tax withheld at source in a

Contracting State at the rate provided for under domestic law shall be repaid in a timely manner where that tax is withheld at a rate in excess of that provided for under the terms of the Agreement.

Done at Helsinki on 13 April 2000

For the Finnish Delegation:

For the Russian Delegation

*Mr Hillel Skurnik*

*Mr Sergei Kalinin*