Taxation in the Financial Sector in Finland

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1. Definitions of the financial sector in Finnish law

As a global phenomenon, the financial sector is regulated on several different levels. There is global regulation like Basel III, continental legislation as secondary legislation for the financial sector in the EU or national legislation, which however might have a direct impact cross the border and may actually be even directed to regulate financial markets in other jurisdictions as Foreign Account Tax Compliance Act (*FATCA*) in the US. Because of the financial crises, the regulation in the sector has multiplied in a couple of years with continuing tendency.

The Finnish national legislation offers several definitions to regulate the operations in financial sector as well as the operators. No general definition exists, which would be used in all sectors of legislation, but the definitions are usually regulated in the specific Acts to serve the purposes of particular legislation in question. It should be noted, that what comes to national financial legislation and the definitions used, the legislation is almost purely based on EU legislation (mainly directives), meaning that the room for maneuver for the national legislator is very limited if null. Even if the execution of the national law differs from the directive, authorities are bound to interpret the national law accordingly with the EU legislation.

In the tax legislation no specific form of financial operators are introduced. Tax legislation harmonized by the EU directive, as Value Added tax, follows the criteria set in the directive. For tax purposes, the legislation usually bases on the definitions of taxable acts. Therefore and especially what comes to indirect taxation, the financial sector taxation is defined by the action (transaction) it runs, not by the nature of the operator as such.

The definitions given for certain kinds of operations or actions in the national tax legislation do not necessarily correspond to the definitions given to the same operations or actions in other legislation. This is the case for example with the definition of securities in Section 17 of the Transfer tax Act and in Section 42 of the VAT Act. The scope of the tax legislation is presented below. However it is understandable, that while interpreting tax law, the definitions used in financial sector legislation are many times used as an aid or a tool, when the operation in question is

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not specially defined in the tax law itself. It may however be noted that the EU tax law may bring other preconditions to the interpretation of national law, and it is not possible to interpret the national tax act accordingly with other national law. There are a number of connections and cross references made in certain national Acts. For example in the Transfer tax Act the definition for securities and other financial operations are connected to national Act ruling financial markets as explained further.

1.1. Banking activities

Banking activity, insurance activity and securities market activities such as investment services are defined in the finance legislation. The Act of Credit Institutions (*Kreditinstitutlagen* 121/2007. *Here: "Credit Institutions Act"; CIA*), which is based on the Council Directive 2009/111/EC, defines *credit institutions* (Section 8) and the operations that the credit institutions may run (Section 4). The CIA also rules other operations, where refundable funds are received from the public. The credit institution may be a deposit bank or a credit corporation. Pursuant to Section 9, a *deposit bank* may be a limited company, a co-operative or a savings bank (Saving Bank Act, *Sparbankslag* 1502/2001; *SBA*).

Special legislation applies to credit institution (credit corporations) with a status of a limited company (Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company**,** *Lag om affärsbanker och andra kreditinstitut i aktiebolagsform* 1501/2001), co-operative (*Lag om andelsbanker och andra kreditinstitut i andelslagsform* 1504/2001) or a mortgage society (*Lag om hypoteksföreningar* 936/1978). These Acts regulate the institutions in question and the activity, which they are entitled to run.

Credit institutions cannot operate without a specific license from the authorities. A credit institution may also be a foreign company, however the CIA sets the criteria to be fulfilled in this case (Section 1.2). Also an investment company based on the Act of Investment Firms (*Lag om värdepappersföretag* 922/2007) and a payment institution (*Lag om betalningsinstitut* 297/2010) is regarded as a credit institution pursuant to Section 13[i]. However, an insurance company may not be a credit institution as such. The CIA also defines other activities and operators in the market as a branch, service company and ownership corporation.

The legislation referred to only gives a general overview of the national legislation in place. An inclusive portrait of the legislation is not possible due to the limited space in the report. There is also other valid legislation ruling the sector, which has not been mentioned here. For example the Payment Provider Act (*Lag om betalningsinstitut* 297/2010) is applied to supply of payment services. The legislation referred to here has at times been used in practice to interpreted the Business Taxation Act and the VAT Act.

1.2. Insurance activities

The Act of Insurance Companies (*Försäkringsbolagslag* 521/2008. *Here: "Insurance Company Act"*; *ICA*), based on directive 2005/68/EC, regulates the activity of an

insurance company. The Act is applicable to limited insurance companies and mutual insurance companies.[ii] The Act legislates the life insurance and insurance against loss or damage by referring to the Act of Insurance Classes (*Lag om försäkringsklasser* 526/2008) in Section 3. Reinsurance companies are defined in Section 4.[iii] Also other definitions connecting to activity are regulated in the Act. The ICA and the Act of Foreign Insurance Companies (*Lag om utländska försäkringsbolag* 398/1995) rules activity, which a foreign insurance company is allowed to run in Finland. The definitions for different kinds of damages covered by insurances are listed in the Act of Insurance Classes.[iv]

The Insurance Contracts Act (*Lag om försäkringsavtal* 543/1994) is applied to insurance other than statutory insurance. Yet insurance policies written under the Motor Liability Insurance Act (279/59), the Patient Injuries Act (585/86) and the Environmental Impairment Liability Insurance Act (81/1998) are governed by this Act, unless otherwise provided in these three acts (82/1998). The Insurance Contracts Act does not cover reinsurance. Section 2 of the Act gives a definition for personal insurance, insurance against loss or damage, insurer, insured, policy holder and group insurance.[v] ICA, the Act of Foreign Insurance Companies and other legislation mentioned above are used to interpret the tax on insurance premiums.

1.3. Supply of shares and other related activities

The Security Markets Act (*Värdepappersmarknadslag* 746/2012; *SMA*) is based on Directive 2010/73/EC and regulates the issuance of securities, obligation to issue a communiqué for the public, public bids, estoppels of abuse and supervision in the security market. The Act is rested on several EU directives listed in Chapter 1 Section 5[vi]. Chapter 2 Section 1 of the Security markets Act gives the definition to securities.[vii] The Act refers to the Act on Investment Services (*Lag om investeringstjänster* 747/2012) based on Directive 2010/73/EC in Chapter 2 Section 2 to define financial instrument. The definition of financial instruments covers the securities as regulated in the SMA as well as the financial instruments in Chapter 1 Section 10 of the Act of Investment Services[viii]. The SMA gives a definition also to issue of shares, stock-exchange, listed company, investment firm etc. The Act on Investment Services is applied to activity, where investment services are offered to the public.[ix] The Act consists of many exemptions to the scope. The Act regulates the financial instruments as mentioned above as well as investment services in Chapter 1 Section 11[x]. In Chapter 1 Section 12 the Act refers to Act of Credit Institutions and the definitions in Section 8 of the credit institutions as well as to the Section 13 of the financial institutions. A license is needed to offer investment services in Chapter 1 Section 11 of the Act of Investment Services. The service provider may also offer additional services in Chapter 2 Section 3[xi]. The Act on Investment Funds (*Lag om placeringsfonder* 48/1999) is applied for management of investment funds. The Act also gives a definition in Section 2 to the scope and concepts for the Act.[xii]

The Act of Trading with Financial Instruments (*Lag om handel med finansiella* instrument 748/2012), the Act for the Procedures for Clearing in Stock and

Foreign Exchange Trading (*Lag om vissa villkor vid värdepappers- och valutahandel samt avvecklingssystem* 1084/1999) and the Act of Book-entry Account (*Lag om värdeandelskonton* 827/1991) are some of the other legislative Acts ruling the sector, but to which here is no possibility to take a better look at.

It should be emphasized, that as far as financial regulation is concerned, it includes many cross references of definitions among the Acts mentioned above. On the other hand, cross references between financial regulation and tax regulation are rare, but may be find in some tax legislation as in the Transfer Tax Act discussed further.[2] It has been also very common by the courts to interpreted VAT Act by using the financial regulation mentioned above.

2. Taxation in the financial sector

2.1. Direct taxation

2.1.1. Income tax

Corporate bodies resident in Finland or permanent establishments, are liable to tax on their entire income, whether derived from Finland or abroad (*unlimited tax liability*).[3] Non-resident corporate bodies are liable to tax on their income derived from Finland (*limited tax liability*). Limited companies, co-operative societies, savings banks, investment funds (unit trusts, mutual funds), mutual insurance companies, foundations, institutions or any other similar legal persons are considered separate taxable entities. The income of the financial sector businesses are taxed, like other businesses, according to the provisions of the Act on the Taxation of Business Profits and Income from Professional Activities (*Lag om beskattning av inkomst av näringsverksamhet*, 360/1968. *Here: "Business Taxation Act"; BTA*).[4]

2.1.1.1. Taxable income

The taxable *net income* is the difference between the proceeds and expenses of a business. The net income is determined, for the purposes of income taxation, under the provisions of the BTA. Business profits are taxed at a flat rate of 24,5 per cent from the net income. Taxable business income is income received in money or money's worth from economic activity. According to BTA Section 5 the following income among others is taxable income for businesses[5]:

1) *sales proceeds* and other compensation received in respect of inventories, investments and fixed assets;

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[2] The description given above of the Finnish legislation in place, is not exhaustive.
[3] Certain exceptions apply to non-resident partners in limited partnerships in venture capital investing due to their flow-through nature.
[4] The following semi-public entities are however exempt from income tax: Bank of Finland, Finnvera Oyj (Official Export Credit Agency), Fund for Industrial Co-operation Ltd (Finnfund), Nordic Investment Bank (NIB), Nordic Project Export Fund (NOPEF), Nordic Development Fund, Nordic Environment Finance Corporation (NEFCO), Social Insurance Institution (Folkpensionsanstalten), certain funds (e.g. employee investment funds, unemployment funds), Government Guarantee Fund (fund for securing stability and depositors' claims in deposit banks), Finnish Innovation Fund (Sitra).
[5] The list is not exhaustive.

2) compensation for *services rendered* and other similar economic activity;
3) compensation or benefits for *letting out* a business or property;
4) *profits* derived from *financial assets*;
5) *exchange rate gains* for business loans and claims;
6) certain *corrections* made to items or credit losses or inventory in the accounting books (*korrigeringsposter*), if the probable acquisition cost or disposal price exceeds the book value for tax purposes.

The amendment 1077/2008 to the BTA brought several amendments to the taxation of the banking sector. The amendment changed the tax treatment of unrealized gains of financial instruments into taxable income and deductible expense for credit institutions, insurance and pension companies. In addition, unrealized index and currency gains as well as hedging instruments were also made taxable income in certain cases. The underline principle is symmetry between taxable income and deductible expense. The credit loss reservation in BTA Section 46 (see below 2.1.1.3) was simultaneously amended to the effect that it no longer concerned insurance and pension companies.

As specialties for the financial sector, i.e. credit institutions, insurance and pension companies the following are also subject to tax:

7) *unrealized gains* of financial instruments held for trading and entered as profit in the profit and loss account (*resultaträkning*);
8) such *unrealized profits* from investments related to unit-linked insurance contracts that are as profit in the profit and loss account (in the case of insurance companies);
9) *unrealized gains* from financial instruments marked at fair value and fair value hedge and entered as profit in the profit and loss account (in accordance with the Act on Credit Institutions (*121/2007; CIA*) or in accordance with international accounting standards)

Dividends are by default tax-exempt for companies. However, pursuant to BTA Section 6a 75 per cent of dividend, interest or other income derived from *investment assets* or dividend paid *by a listed company to a non-listed company* is taxable income. An exception to this rule is when the company owns 10 per cent or more and thus falls within the scope of the new Parent-Subsidiary Directive, which makes the income tax-exempt. Also, dividend from *foreign companies* that are not from the EEA is 75 per cent taxable income.

Interest paid on the participation capital of a co-operative society, the part of the profit which is paid on the basic reserves of a savings bank, the interest paid on investments in the additional reserves of a savings bank and the interest paid on the guarantee capital of a mutual insurance company or insurance association are also treated as dividend according to Section 6a. If dividend is paid on a share which has been lent (under a security lending contract), the amount paid by the borrower as a substitute (substitute dividend) is treated in the same way as ordinary dividend.

According to the Government Proposals (HE 58/2012 and HE 92/2004) introducing the amendment to the BTA, dividend income by companies is by default tax-exempt, unless otherwise specified. Financial institutions are taxed more heavily in cases where the dividend flows from non-listed companies and is thus considered as an investment asset (*investeringstillgång*) and the total ownership does not reach to the 10 per cent required by the new Parent-Subsidiary Directive (2011/96/EU). This dividend would in the case of ordinary limited companies be tax-exempt dividend as they may not have investment assets. The different treatment also applies to dividends between two listed companies, when the receiver is a non-financial company.

According to BTA Section 6b capital gains derived from transfer of shares marked as fixed assets that have been held without interruption over a year and give the right to at least 10 per cent of the capital of the company *do not* constitute taxable income for the transferor.[6] The transferor may not be engaged in venture capital investment activity nor may the transferred company be a residential housing company, real estate company or a limited company that primarily manages or holds such companies. As non-financial companies only have three different forms of assets in their normal bookkeeping (financial assets (*finansieringstillgångar*) Section 9, floating assets (*omsättningstillgångar*) Section 10 and fixed assets (*anläggningstillgångar*) Section 12) the sale of shares usually falls within the tax-exempt criteria. For financial companies (financial institutions, insurance and pension companies) however, the possibility of having investment assets Section 11 opens up the possibility of different tax treatments depending on the interpretation of rules, and investment activities typically fall within the ambit of Section 11 and are thus taxable. In the division of assets into classes, the intended use of the assets is usually decisive, yet many borderline cases exist. In order to alleviate the uncertainty of the potentially differing interpretations, a company may seek an advance ruling from the Tax Administration (*Skatteförvaltningen*).

The BTA contains specific provision concerning the accrual (*periodisering*) of financial sector income. Profits arising from the appreciation or depreciation of claim certificates, securities and derivatives (and other financial assets) made in the accounting books are allocated to the year in which they are entered in the taxpayer's bookkeeping as earnings or losses (Section 26).

2.1.1.2. Allowable expenses

In general, expenses are deductible in a business' taxation if they occur from acquiring or maintaining income. The fact that it was the taxpayer's intention to incur a particular expense for this purpose is usually the decisive test for deductibility.

Pursuant to Section 7 and 8 of the BTA allowable expenses constitute *inter alia*:

1) Expenses incurred in the *acquisition of inventories and investments*;
2) Expenses incurred in the *acquisition of fixed assets*;

[6] Due to the symmetry principle, acquisition costs for such shares are non-deductible.

3) Expenses relating to depreciation of claim certificates, securities and derivatives made in the accounting books of a credit institution in accordance with the Act on Credit Institutions or a corresponding foreign Act;
4) *Wages and salaries, pensions* and *rent* for real property for premises used in business activities;
5) Unrealized losses of financial instruments held for trading and entered into loss and profit account.

Generally allowable expenses are only incurred if the resulting income is taxable, and thus expenses toward accruing tax-exempt income falls under specific rules. Pursuant to Section 16, non-allowable expenses are among others fines, bribes and other administrative sanction. The bank tax (see 2.1.4 below) levied is not a deductible post

Interest expenses from economic activity are considered as allowable expenses and even participating loans (*vinstandelslån*) are explicitly mentioned as allowable expenses according to BTA Section 18 Subsection 1 point 2. Recently, however, legislation has been introduced to limit a company's right to make tax deductions on interest expenses in economic activity (*ränteavdragsrätt*) exceeding 500 000 euro[7] for companies and partnerships as of 2014 (amendment 983/2012, HE 146/2012). The law entered into force 1 January 2013 and aims primarily to limit tax planning in connection with highly leveraged venture capital investments that have been subject to public criticism in Finland for transferring taxable income into countries with lower overall taxation. The amendment does not apply to credit institutions, insurance and pension institutions and to a certain extent not their group companies. The reform is thought to raise tax income by 70 MEUR despite only applying to a few hundred companies.

2.1.1.3. Credit Loss Reservation

The Credit Loss Reservation (*kreditförlustreservering*) in BTA Section 46 is one of the few bank specific voluntary reservations that can be made to the taxable income. A deposit bank may deduct a maximum of 0,6 per cent of its total pool of receivables each year in the taxation. The total accumulated and unrealized credit loss reservations cannot, however, not exceed 5 per cent of the total pool of receivables. The amendment 1077/2008 to BTA removed insurance and pension companies from the scope of the Section. Several Government Proposals have suggested ceasing with the reservation from banks as well, but so far these reforms have not be enacted upon.

2.1.2. Support payment to various Funds

In order to safeguard the interest of individual customer in case of bankruptcy, there are a number of provisions relating to support payments into funds by actors in the financial sector. The CIA includes provision on support payment pursuant to Section

[7] All interest expenses below 500 000 euro are deductible, but exceeding sums are not deductible if they exceed 30 per cent of the profits plus interest expenses and other posts. However, the non-tax deductible interest expenses would be at the most the intra-group net interest expenses.

99 (*inlåningsbanks garantiavgift*) to the Deposit Guarantee Fund. amounts to 0,175 per cent of the banks risk-weighed assets. Additionally banks are according to CIA Section 117 liable to pay a fee of maximum 0,5 per cent of the banks assets as support payment to the Government Guarantee Fund (*säkerhetsfondens garantiavgift*).[8] For other companies that fall underneath the Act on Investment Services, a payment that the Ministry of Finance established is made to the Investor Compensation Fund. All these payments are allowable expenses in taxation.

2.1.3. Bank tax

Following discussions of G20 and actions taken by many European countries, Finland's Government announced in it's program in June 2011, a plan to introduce an annual tax on banks. The law proposal was given for the parliament in November and accepted in December 2012. The law entered into effect on 1. January 2013. The declared aim is to collect funds to finance costs of future financial crises and to promote neutrality between banks in the Nordic area where Sweden for example has already adopted a similar levy.

The law is temporary, legislated to be in force in 2013-2015 and it's application is conditional on the possible acceptance of the European Commission's proposal for Directive (COM(2012) 280), which establishes a coordinated framework for the recovery and resolution of financial sector firms. The Commission's proposal includes a resolution fund financed from a fee collected from banks and financial service firms. If the Directive comes into force as planned in January 2015, the national bank tax will be terminated. The estimated annual revenue from the bank tax is 170 million euro.

Liable to pay the tax are deposit banks (Act of Credit Institutions, see above) established according to the Finnish law, i.e. Finnish bank groups and Finnish subsidiaries of foreign banks. Branches of foreign banks and foreign branches of Finnish Banks are not liable to pay the tax. This definition corresponds to the Swedish application of its stability fee. Similarly, under the proposed crisis management directive, branches of foreign banks with domicile in an EEA country are not liable to pay the resolution fee. What is worth noting is that Finland restricts the definition of tax payers to deposit banks while many other countries may include insurance companies and several other types of financial services firms.

Bank tax is calculated using a flat rate of 0,125 per cent. The base is measured from the asset side of the bank's balance sheet. The base is the bank's risk weighted assets (RWA) defined in the Act of Credit Institutions (121/2007, Section 5). This concept is based on the Basel Accords published by the Basel Committee on Banking Supervision and it is used widely by banking supervision authorities when setting capital requirements for banks. The Finnish definition of the tax base is rather unusual by international comparison. Most countries among them Sweden and the UK define the tax base using the liability side of the bank's balance sheet.

[8] The actual amounts is often much less, but the formula for arriving at payment obligations are relatively complex in the legislation.

Although there is no explicit stability or resolution fund financed from the tax, the proceeds are moved to a transferable appropriation which means that the collected sum can be deferred to future years. The Act does not include rules concerning the use of these funds. The tax is calculated and paid using self-assessment, though the Finnish Tax Administration is responsible for tax collection and supervision tasks. The due date for the tax payment is 30th April and the payment is calculated based on the bank's RWA at the end of the preceding year. Under the provisions in the Business Taxation Act (see above) the bank tax is not a deductible item in taxation.

While bank levies do not have any single model internationally, the design of Finland's application includes some special aspects. First, the definition of liable institutions is narrow covering only deposit banks. IMF (2010) e.g. seems to favor a broader definition to avoid migration of operations to institutions outside the scope of the tax. Finland's decision may at least partly be explained by the important role 'universal banks' in its financial markets but also the stability of its financial sector in recent years. Second, the tax base is defined from the asset side of the balance sheet which is exceptional but not entirely unknown. The application of France has some similarities in this respect. One clear benefit of this definition is that it is defined in the Act of Credit Institutions and is therefore conceptually clear and tested. Among possible drawbacks are that the base is fairly narrow since the risk weights for several types of assets are very low. Hence, using this base even a moderate revenue target may require a high tax rate. The tax rate 0,125 per cent is indeed higher than in many countries, e.g. in Sweden, the UK and the Netherlands.

The IMF(2010) remarks also that choosing RWA as base duplicates the effects of regulations also targeted at riskiness of lending activity. Interestingly, however, the Finnish law proposal does not justify the tax on grounds of incentives to reduce risks. The tax probably has such effects because the RWA base rewards less risky lending. In some other countries the design and the motivation of the tax reflect more explicit targeting to reduce risks (systemic risks, maturity transformation; see IMF, 2010).

2.2. Indirect taxation

2.2.1. Value added tax[9]

Finland amended the turn over tax system to Value Added Tax (*VAT*) from the beginning of 1995 as a result of the accession to the EU. The national VAT Act (*Mervärdesskattelagen* 1501/1993) is based on VAT Directive 2006/112/EC (earlier 77/388/EEC) of the European Union. Tax revenue in 2012 will be around 15,8 billion euro.

Based on Article 135(1) of the VAT Directive, certain financial services are exempt from VAT. One of the main reasons for this exemption has been the

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[9] Text bases partly on writer's article in Consumption taxation and financial services, Cahiers de droit fiscal international by the International Fiscal Association, 2003 Kluwer.

problem of valuing the basis on which tax can be assessed. The valuation problem concerns the difficulty of identifying and measuring the value of financial services on a transaction-by-transaction basis for the services which are not fee based but charged by other means as interest. On the other hand, as significant a reason as the valuation problem has been taxation policy. Even if the companies as taxable persons could deduct the input VAT on their purchases, this would not be possible for the private consumers, and the input VAT on loans would therefore be finally paid by the private households. It is however evident, that the suppliers of financial services tend to roll the undeductible VAT to the prices and the customers of financial service suppliers are even today paying at least partly the undeductible VAT (hidden VAT) in the remuneration of any kind.

As a member State of the EU, Finland is obliged to follow article 135(1) in the VAT directive for the exemption of financial services.

As referred to in Section 41 of the VAT Act, tax is not payable on the sale of financial services. Financial services are defined in Section 42. The following services constitute exempt financial services:

1) Acquisition of repayable funds from the public and other acquisition of funds;
2) Granting of credit and other financial arrangements;
3) Credit management by the person granting the credit;
4) Payment transactions;
5) Currency exchange;
6) Dealing in securities;
7) Provision of guarantees.

Dealing in securities means the sale and brokerage of shares and other corresponding interests, claims and derivative agreements, also when they are not made out in documentary form. The concept of financial services has been defined in Section 43, which states that financial services are not deemed to mean the sale and brokerage of securities, which by themselves, or together with other securities, carry the right to hold a particular apartment or immovable property, or part of an immovable property. To prevent the risk of causing distortions of competitive services offered by trustees (trustee department), consultations concerning securities, stock market and other investment activities, as well as safety-deposit services, are taxable transactions.

2.2.1.1. VAT on financial services

According to settled case law of the ECJ[xiii], the terms used to describe the financial services exceptions are to be interpreted strictly since these constitute exceptions to the general principle, that VAT is to be levied on all goods and services supplied for consideration by a taxable person.

According to the Government Proposal for the new VAT Act (HE 88/1993 vp), the basis on which a financial service is exempted is not by whom it is supplied, but by the characteristics of the service itself. This principle is also confirmed by ECJ. Financial services listed in Section 42 are exempt even if the

supplier is someone other than a company usually supplying financial services, such as a bank, provided that the action fulfills the specific elements of that particular financial service. According to the Government Proposal, when interpreting the concept of a financial service, other national law concerning the specific service should be taken into account. This is maybe something that the ECJ has had in mind when ruling that it is evident from the Directive, that the exemptions constitute independent concepts of Community law which must be placed in the general context of the common system of VAT introduced by the Directive[xiv].

Financial services are defined according to the nature of the services provided and not according to the person supplying or receiving the services. This means that the type of legal person supplying or receiving the services does not affect its VAT treatment. Because of the way financial services exempted from VAT are defined, the specific manner in which the service is performed, electronically, automatically or manually, does not affect the application of the exemption either. The decisive factor for the exemption of the transaction is the nature of the service and not the way in which it is performed.

The Finnish VAT Act does not differentiate between different kinds of remunerations and the exemptions for financial services apply regardless of the way in which the consideration is expressed. Accordingly, whether the consideration is a fee, a commission, or based on the margin or the interest does not affect the liability of the supplying of the financial service.

Acquisition of repayable funds from the public and other acquisition of funds. Services connected to credits, loans and deposits are stated in Section 42.1 of the VAT Act. Tax is not payable on the sale of financial services when it concerns acquisition of repayable funds from the public and other acquisitions of funds. According to the Government Proposal for the new VAT Act (HE 88/1993 vp), most of the transactions referred to in the Section would be exempt even without this particular rule, because the transactions defined in this Section could be compared to transactions where a supplier of financial services as bank accepts deposits from depositors. The acquisition of funds through different kinds of bonds and securities is also exempt.

The meaning of Section 42.1 has caused problems for companies that issue shares to raise capital. The question for this matter has been whether a service is supplied by issuing shares to subscribers or whether is it simply a question of raising capital. All actions to raise capital for the company itself to run the taxable business are outside the scope of VAT based on ECJ case law. The Supreme Administrative Court; *SAC* (Högsta förvaltningsdomstolen) is the court of last resort in tax and other administrative cases.[10] In the case 3255/2003 *SAC* regarded, that the acquisition of shares of the companies by a company specialized in venture capital was regarded as

[10] Case law from the Supreme Administrative Court from Edilex News (www.edilex.fi), the SAC's webpage (www.kho.fi), the CTB's webpage (www.vero.fi).

out of scope of VAT. This raises the question whether the company has a right to deduct the input VAT occurred in these occasions.

Granting of credit and credit management. According to Section 42.2 of the VAT Act, tax is not due for the granting of credit and other financial arrangements. According to Subsection 3, credit management by the person granting the credit is also exempt from VAT. Services such as the granting of loans, credit negotiations and credit dealing, securing a loan for a customer from different creditors, installment sales, debt factoring (made on purpose against the directive to safeguard the neutral treatment of different models of financing) and the service provided by a credit card company to retailers who accept the cards are all exempt. Credit management by the original grantor is free from tax, even if the grantor has sold the credit itself to the third party. Also the credit granted by the company supplying a taxable good or a service to the customer is exempt. Same applies to interest included in payments by the customer. In 2009 the SAC ruled (*KHO:2009:97*) that a service provider offering an internet server to apply a credit in tandem from different grantors is to be regarded as an exempt supply of credit negotiation. Debt collection, however, is specifically excluded from the exemption.

Payment transactions and exchange of currency. Payment transactions/payment transfers are classified as financial services in Section 42.4 VAT Act. Subsection 4 covers basically article 135.1.d of the VAT directive. With "payment transactions" the national VAT Act covers exemptions concerning transactions, including negotiation, concerning deposits and current accounts, payments, transfers, debts, credit card payments, cheques and other negotiable instruments, as stated in the VAT directive. The SAC has rendered a couple of rulings concerning payment transactions to clarify this rule (*KHO:2011:100*, which is based on ECJ C-350/10; *KHO 3.10.2006 T 2535*; *KHO 17.12.2001 T 3136* and *KHO 17.12.2001 T 3137*). Exchange of currency on someone's own account or for the account of a third person, is exempted in Section 42.5. According to the Government Proposal for the new VAT Act (HE 88/1993 vp), even derivatives, which have a currency as an underlying, would be exempt from VAT.

Provision of guarantees. According to Section 42.7 of the VAT Act, no tax is paid on the sale of provision of guarantees. The exemption covers activities, where a certain amount of money is guaranteed by a guarantor within a specific period of time. The guarantee has to be covered with a payment in money.

Services in the sphere of shares and securities. Dealing in securities as a financial service in Section 42.6 means the sale and brokerage of shares and other corresponding interests, claims and derivative agreements, also when they are not made out in documentary form. Subsection 6 corresponds to Article 135.1.f of the VAT Directive. The concept of shares and securities is defined very broadly and the Government Proposal for the new VAT Act (HE 88/1993 vp) states that the scope of

shares and securities would be broader in VAT terms than it is defined in the Securities Markets Act (495/89), which since been replaced by the Security Markets Act, *SMA* 746/2012 referred to above.

Exemption in VAT includes interests in companies or associations, bonds, debentures, holdings, stocks and derivative contracts such as futures and options when a security or currency is as underlying. Also, shares of investment funds are considered securities, which can be a subject of dealing that is exempt. The exemption covers both listed and unlisted securities. Dealing in securities covers the issuing of shares by a company as well as the trading of shares, securities and derivatives in and outside the stock exchange. The exemption covers a transaction where a dealer buys and sells securities for its own account as well as for customer's accounts.

According to the SAC (*KHO:2001:70*), fees paid by the members of the stock exchange for permission to deal in stocks through the computer system owned by the stock exchange, were regarded as payments of the dealing in securities and were therefore exempt from VAT. In the case *KHO:2001:4* the SAC ruled, that the settlement of the trade in the stock exchange was exempt by Section 42.6 of VAT Act.

What comes to portfolio management services, in a case by the SAC (*KHO:1999:686*) the court regarded the service to be exempt as the investment service provider had a power to make the decision of the investments on behalf of the customer. In the case (*KHO:2001:61*) the supply was regarded as taxable, as the supplier could not make the decisions of the investments by himself, but needed an approval of the customer. Given the judgment of the ECJ to the case C-44/11 Deutsche Bank, the case law of Finland needs to be revisited as well.

2.2.1.2. Insurance services

According to section 44 of the VAT Act, the tax is not payable on the sale and brokerage of insurance services. Insurance services are also deemed to mean the handling of insurance applications, services directly linked with the management of an insurance during its period of validity, services in respect of insurance financing, services in respect of the settlement, calculation and decision making concerning pensions and insurance benefits, services in relation to the payment of and the compilation of statistics on pensions and insurance benefits, services in relation to the forecasting of pension liability and of pension expenses as well as services related to the assessment of insured loss and damage related to the insurance activity.

The SAC has handed down some rulings concerning insurance services especially linked to outsourced services. In two decisions (*KHO:2000:21* and *KHO:2000:20*) the SAC came to a similar conclusion as the ECJ in the corresponding case C-224/11 BGŻ Leasing. When compared to the article 135.1.a of the VAT directive, which allows the Member States to exempt "insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents",

Finnish legislation may go beyond the scope of exemption in VAT directive, as it also allows the exemption for many outsourced services.

2.2.1.3. VAT groups

Pursuant to Section 13a of the VAT Act, two or more enterprises supplying principally financial or insurance services, as well as other enterprises controlled by them, can at their request be considered a single taxable person for VAT purposes through group registration. A precondition for such treatment is that the enterprises have their domicile or fixed establishment (*KHO:1997:81*) in Finland and are closely bound to one another by economic, financial or organizational links.

The group registration scheme is based on article 11 of the VAT directive and enables the exemption from tax of the internal supplying of commodities within the group, which as such would be taxable supplies. All the group members are jointly and severally liable for VAT on the taxable activities of the group, but the representative member appointed by the group represents the whole group in relation to the tax authorities. The representative member is responsible for submitting returns, for paying tax and claiming refunds on behalf of the whole group.

The question arises as to how to interpret situations where an international company is registered to a group in different countries at the same time via its fixed establishments. How should be treated the supplies between a fixed establishment in one country and the head office in another country? In a VAT group, members of a group are one taxable entity and therefore deliveries of goods and services inside the group are considered to be deliveries inside one company. For example if the company could be registered to more than one group at the same time, this would enable deliveries without VAT between the VAT groups in different countries profiting all the group members. This has been the case in a decision by the SAC (*KHO:2004:120*), where it concluded that a Swedish company in financial sector was allowed to make transactions between the groups in Denmark, Sweden and Finland without VAT consequences. Consensus about the interpretation has not been yet reached at the EU level and this may ultimately be a matter of the ECJ to decide in the pending case of C-7/13 Skandia Amerika.

The ECJ has in its judgement of the 23rd of April 2013 C-74/11 The commission against Finland confirmed, that the limitation of the group registration only to the financial and insurance sector in Finland is in accordance with article 11 of the VAT directive. The group may also include non-taxable persons like holding companies.

2.2.1.4 The commission proposal for the amendments

What comes to exemption of financial and insurance services, the VAT directive has not been amended after it was adopted in 1977. Because of the developments in the financial market; increasing amount of services and services providers, outsourcing, technical services ect, there is a need to revisit the directive to

up-date the exemptions to better correspond the current market. The Commission gave end of 2007 proposals for amendments to the directive COM (2007) 747 final and for laying down the implementing measures COM (2007) 746 final concerning financial and insurance services. The neutral and uniform treatment of similar/same kind of services has been seen as one of the main goals for the reform. The discussion about the proposals in the Council working party was active till end of 2011, when a presidency progress report 18650/11 FISC 170 was given to the Council. The report shows, that there are some particular questions as outsourcing, derivatives and investment funds, which need deeper analyzes. After the Polish presidency the new presidencies have not taken the topic on the agenda and the proposals are still pending in the Council. It is very difficult to estimate, when some progress could be take place.

2.2.2. Tax on insurance premiums

Tax to be charged of specific insurance premiums was introduced through the Insurance Premium Tax Act (*Lag om skatt på vissa försäkringspremier* 664/1966) in the beginning of 1967 and is collected by the State. The tax on insurance premiums as a self-assessed tax is similar in certain respects to the VAT, and if not otherwise ruled in the Insurance Premium Tax Act, the VAT Act is applicable. Therefore for example the procedural rules of the VAT are applied to tax on insurance premiums.

Tax is imposed on insurance premiums, when the insured property or other insured interest is situated in Finland or the insured interest is related to activity exercised in Finland. Premiums related to a personal insurance, credit insurance or reinsurance, premiums paid based on the Treatment Injury Act (*Patientskadelag* 585/86) or the premiums paid for cargo or transport equipment in international transport are exempt from the tax. Tax is payable on premiums paid of property, liability, legal protection, loss-of-profits and vehicle insurance.

The insurer is liable to the tax, if the insurer runs its business in Finland. If the insurer is so called EEA-insurance company, which supplies insurance services in Finland without an establishment, a tax representative is required. If the premium is paid to an insurer, which does not carry on its business in Finland, the policyholder is liable to the tax. This is the case, when the insurance service is supplied by a company not established in Finland but outside the EEA-area. As the taxable person may be the insurer of the policyholder, an insurance broker cannot be liable to pay tax. The definition of the insurer and the activity of the insurance companies are regulated in the Act of Insurance companies and Act of foreign insurance companies as referred to above. As the Act requires, that the insured property or other insured interest is situated in Finland or the insured interest is related to activity exercised in Finland, it has sometimes been difficult to judge whether this is the case. Tax administration refers to the Section 6 concerning the caring of the risk, in the Act of Foreign Insurance Companies for the judgment. However in practice the conclusion might be difficult to make. The fact, that the policyholder is liable to pay tax of the insurances

supplied by a company outside the EEA-area, has gained little attention. However at the moment no alteration to the legislation has been planned.

The tax rate as of 1 January 2013 is 24 per cent of the premium, net of tax. The tax revenue in 2012 was 660 million euro. The tax rate of the insurance premium tax has followed the VAT standard tax rate, and the tax is seen to compensate at least partly the exemption of insurance services in VAT. The tax is payable monthly for the premiums received or paid.

2.2.3. Transfer tax

A transferee of real property or securities has been liable to pay transfer tax under the Transfer Tax Act (*Lag om överlåtelseskatt* 931/1996) from the beginning of 1997. Transfer tax is partly based on the stamp duty levied in Finland already from the early 1900s. The Stamp Duty Act (*Lag angående stämpelskatt* 662/1943) applicable before the Transfer Tax Act covered not only the transfers of real property and securities but also the payments of different kind of legal documents, bills of sales and exchange, bonds, certificate of claims, warrants etc.

The transfer tax is collected to the State budget. The revenue in 2012 was 586 million euro. The State and its institutions are exempt from the tax. However the tax is payable by the State's business institutions, the Social Insurance Institution, Enterprise Development and Financing Ltd, the Bank of Finland, the Fund for Industrial Co-operation Ltd (Finnfund), Finnish National Fund for Research and Development and the Government Guarantee Fund.[11] Transfers to an EU organ situated in Finland are tax exempt, if the property or securities have been acquired for its official use. Furthermore, if the consideration, which has been used in the transfer, is real property or securities (i.e. if the transfer is an exchange) the tax must be paid for both transfers.

The tax of 4 per cent of the purchase price or other remuneration is payable on transfer of immovable property, also when the transfer is based on exchange of properties or investment in the company. Immovable property is defined covering unseparated parcels and specified shares of real property, leasehold or usufruct of real property, which must be registered under the Land Law Code and lastly buildings and constructions for the permanent use on the real property. The Province of Aland, municipalities, local communities of a church or registered religious communities are not liable to pay tax on transfers of real property.

Transfer is exempted in some cases, as when the real property or securities are transferred to a corporate body that continues a previous activity in connection with a change in a corporate body's form, a merger or a division (with or without the dissolution of the corporate body that is divided). The reorganization must be realized under the legislation concerning the type of corporate.

2.2.3.1. Transfer of securities

[11] Compare to semi-public institutions exempt from business income taxation, above 2.1.

The tax rate is 1.6 per cent of transfer of securities. The tax base is either the transfer price, the value of any other consideration or the market value. However from the 1st of March 2013 the tax has been raised to 2 per cent for the securities, which give a right to govern a building, a flat, a real estate or any immovable property as a whole or partly. The decisive factor for application of the tax rate is the moment, when the contract is concluded. It should be noted, that the tax base was also amended from the beginning of 2013 to cover the housing company debt connected to the shares transferred.

The tax is payable also on a transfer of securities to general or limited partnerships, limited companies or other corporate bodies, if the consideration is a share or a part or if the transfer has been made in the same way as any other capital investment and a transfer made as a consequence of the dissolution of a corporate body and transfer into private use of an asset by a partner or any other distribution of assets. Transfer of securities issued by an unregistered corporate body is also liable to tax.

The definition of the security is regulated in Section 17 of the Transfer tax Act[xv]. Securities are as shares and interim certificates of share issues, certificates of participation, bonds or other certificates of claim issued by a corporate body, where the interest is calculated on the basis of the debtor's dividend or annual result or where the bond or certificate carries the right to participate in the debtor's profits, letters of right of subscription and electronic book entries in a computerized trading system. Foreign securities, i.e. securities issued by foreign corporations, are outside the scope unless it is a questions of direct or indirect owning the real estates.

The securities, which are traded in the regulated market are out of scope of the law. The scope is defined in detail in Section 15a of the Transfer Tax Act[xvi]. A general condition for the tax exemption is, that the broker or a party to the transfer is an investment service company by the Act on Investment Services (747/2012)[xvii]. If the broker hired by the transferee or the party of the transferee is a broker other than a broker mentioned above, the tax exemption requires, that a declaration of the transfer is given to the Tax Administration (*Skatteförvaltningen*) within two months from the transaction. There are some other limitation to the exemptions, which are listed in Section15a[xviii] of the Transfer Tax Act.

If none of the parties to the transfer is resident in Finland (Income Tax Act -based residence) or a Finnish branch of a foreign credit institution, a foreign investment firm or a fund management company, no tax is levied. If in cases other than those referred to in the preceding sentence the transferee is a non-resident and not a Finnish branch of a foreign credit institution, a foreign investment firm or a fund management company, the transferor is obliged to charge the tax to the transferee. However, transfer of shares in a residential housing company or other real property company (including co-operatives), is subject to tax.

The tax must be paid in two months after the contract is signed. In case of a transfer of shares in a residential housing company or other real property company, tax is due in two months from the moment that the ownership was transferred. However if one of the parties to the transfer is a dealer in securities or if

such a dealer acts as a broker or commission agent for one of the parties to the transfer, the security is sold at an auction or the transfer is made through a real estate agent, tax is due when signing the contract. In all these cases the dealer in securities or the auctioneer is obliged to recover the tax from the transferee and to pay the tax on their behalf. As the legislation has been largely amended from the beginning of 2013 to cover the earlier loopholes, it is still too early to say, if the amendments will fulfill the expected objectives. It may, however be noted that the new legislation has been very challenging to interpret from the beginning.

2.2.4. Financial Transaction Tax

The European Commission gave a proposal of Financial Transaction Tax (*Transaktionsskatt*; *FTT*) in September 2011; COM(2011) 594. The proposal consisted of a FTT to be levied on all transactions on financial instruments between financial institutions when at least one party to the transaction is located in the EU. The exchange of shares and bonds would be taxed at a rate of 0.1% and derivative contracts, at a rate of 0.01% of their value. However as all the Member States including Finland, were even after negotiation not ready to accept the proposal and introduce the FTT, eleven Member States send a request to the European Commission to authorize enhanced cooperation. On 22 January 2013 the Council adapted the decision to authorize the eleven Member States to start enhance cooperation on FTT by the consent of the Parliament. On 14 February 2013 the European Commission adopted a proposal for a Council Directive implementing enhanced cooperation in FTT; COM(2013) 71. The new proposal is based on an earlier proposal of the Commission from 2011. However, some changes have been made especially because of the limited application areawise in the EU.

The aim of the tax is to promote equality between the financial sector and other sectors, to prevent the credit institutions from engage in too risky activity, to prevent future crisis and to gather funds to the public economy. On the other hand, the FTT would most likely result in some uncertainty factors e.g. risk of raised costs for end consumers.[12] According to estimations by the European Union, the member states could gather new tax revenue 57 billion euro annually if the FTT was introduced EU wide. In the new proposal from the February 2013, the revenue is estimated to be 30-35 billion euro among 11 Members States joining the enhanced cooperation. For Finland the proposed tax was estimated to gather 300 to 600 million euro annually.

In Finland the Government parties remained divided on the participation in the preparation of the tax. The National Coalition stated that it would support the plan only, if the tax were to be widely adopted across the EU. So far Finland has opted out of the enhanced cooperation. As sharing the banking sector with Sweden, a significant reasoning for Finland to stay outside the enhance cooperation has been that Sweden would not join the work. Some parties argued that the tax could lead to

[12] Government's press release 140/2011.

danger of job losses in Finland, if banks were to transfer their operations affected by the tax to other locations outside the scope of FTT, like Sweden.[13]

3. Other questions relating to the taxation of the financial sector

3.1. Tax or charge?

The question regarding the payments made to the State as a tax or for other purposes is important, as it affects the procedural and contextual aspects of the legislative work in the Parliament. EU legislation also pays attention to the earmarking of the funds, when appraised if the payment is a tax or a charge. In Finland, the approach is different than that of the EU.

The Constitution of Finland (*Finlands grundlag* 731/1999) defines the tax and charge collected by the State in Section 81 of the Constitution.[xix] The Section 121.3 of the Constitution rules the criteria for taxes introduced by the Municipalities[14]. Pursuant to the Constitution the state tax is governed by an Act, which shall contain provisions on the grounds for tax liability and the amount of the tax, as well as on the legal remedies available to the persons or entities liable to taxation, while the general criteria governing the charges to be levied on the official functions, services and other activities of State authorities and on the amount of the charges are laid down by an Act. Based on the Government Proposal (HE 1/1998) the charges described in Section 81 bear the character of being compensation or a remuneration of the services provided by the State, as the other monetary payments to the States are regarded as taxes.

In several borderline cases the parliament has been obliged to analyze the government proposals to rule if the new instruments to collect funds to the State is regarded as a tax or a charge. The Constitutional Law Committee (*Grundlagsutskott*) of the Parliament has in its practice regularized its interpretation by stating that the essential distinction between taxes and charges is, that charges include consideration of the service or good supplied. The consideration needs to correspond the value of the service or good supplied. If no remunerativeness exist or also if the remuneration is far beyond the service or good supplied, it comes down being a tax. The charges collected by the State are regulated in Act for Grounds of State Payments (*Lag om grunderna för avgifter till staten* 150/1992).

Charge is also seen to be optional, as the purchase may decide if he wants to buy a service etc. or not. This kind of an optionality is lacking when being a question of a tax, as no contractual relationship exists between the citizen and the State. It may be added, that the earmarking or funding the revenue would not make any difference in this respect,[xx] even if the taxes are usually collected to the general State budget.

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[13] Others felt that it would have been to Finland's advantage to exercise its influence in the pioneer group to ensure that any possible negative repercussions would not come to pass.

[14] "Kommunerna har beskattningsrätt. Bestämmelser om grunderna för skattskyldigheten och för hur skatten bestäms samt om de skattskyldigas rättsskydd utfärdas genom lag". Because of the sovereignty of the Municipalities, the taxable amount may be ruled without a legislative act by the parliament. Charges paid to the Municipality are not ruled in the Constitution.

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[i] Med ***finansiella institut*** avses i kreditinstitutlagens 13 paragraf finländska eller utländska företag som inte är kreditinstitut eller utländska kreditinstitut och vars huvudsakliga verksamhet är att tillhandahålla tjänster som avses i 30 § 1 mom. 3–11 punkten eller att förvärva aktier och andelar. Som finansiella institut betraktas också värdepappersföretag som avses i lagen om värdepappersföretag samt med dessa jämförbara utländska företag, om inte något annat föreskrivs nedan. Som finansiella institut betraktas dessutom betalningsinstitut enligt lagen om betalningsinstitut (297/2010) samt med dessa jämförbara utländska företag, vars huvudsakliga verksamhet är att tillhandahålla betaltjänster eller att bedriva någon annan affärsverksamhet som avses i denna paragraf. Som finansiella institut betraktas inte försäkringsholdingsammanslutningar som avses i 1 kap. 8 § i försäkringsbolagslagen (521/2008) och inte heller konglomerats holdingsammanslutningar som avses i lagen om tillsyn över finans- och försäkringskonglomerat (699/2004), om inte något annat följer av 73 § 2 mom. i denna lag.

[ii] Enlig 1 kap 1 paragraf i lagen ett försäkringsbolag kan vara ett privat försäkringsaktiebolag eller privat ömsesidigt försäkringsbolag eller ett publikt försäkringsaktiebolag eller publikt ömsesidigt försäkringsbolag. På försäkringsbolag tillämpas aktiebolagslagen (624/2006) enligt vad som föreskrivs i försäkringsbolagslag.

[iii] Ett *återförsäkringsbolag* är ett försäkringsbolag som enbart bedriver återförsäkringsverksamhet och affärsverksamhet som är direkt anknuten till återförsäkringsverksamheten. På återförsäkringsbolag tillämpas bestämmelserna om skadeförsäkringsbolag, om inte något annat föreskrivs i denna lag.
Ett *captivebolag för återförsäkring* är ett återförsäkringsbolag vars syfte är att återförsäkra risker endast för den företagsgrupp till vilken bolaget självt hör. Ett återförsäkringsbolag som ägs av ett försäkringsbolag eller av en försäkringsgrupp anses dock inte vara ett *captive*bolag för återförsäkring.

[iv] Till exempel i paragraf 2 skadeförsäkringsklass 1 omfattar: ”Olycksfall", omfattar fasta penningförmåner, ersättningar av skadeståndstyp och kombinationer av dessa samt passagerarskador. Denna skadeförsäkringsklass omfattar även arbetsskador och yrkessjukdomar ” och skadeförsäkringsklass 2: "Sjukdom", omfattar fasta penningförmåner, ersättningar av skadeståndstyp och kombinationer av dessa. Skadeförsäkringsklass 8: "Brand och naturkrafter", omfattar all skada på eller förlust av egendom som orsakas av brand, explosion, atomenergi, jordskred, storm eller annan naturkraft än storm och till exempel skadeförsäkringsklass 14 i paragraf 7 omfattar "Kredit" omfattar försäkring för allmän insolvens samt försäkringar som tecknats som säkerhet för betalning av exportkredit, avbetalningskredit, hypotekskredit och lantbrukskredit.

[v] Enligt paragraf 2 i denna lag avses med
1) *personförsäkring* försäkring som gäller fysiska personer,
2) *skadeförsäkring* försäkring mot förluster som beror på sakskada, skadeståndsskyldighet eller någon annan förmögenhetsskada,
3) *försäkringsgivare* den som meddelar försäkringar,
4) *försäkringstagare* den som har ingått försäkringsavtal med en försäkringsgivare; om den rätt som grundar sig på försäkringen överlåts, skall på förvärvaren tillämpas vad som stadgas om försäkringstagare,
5) *försäkrad* den som är föremål för personförsäkring eller till vars förmån en skadeförsäkring är i kraft samt
6) *gruppförsäkring* försäkring där de försäkrade är eller kan vara medlemmar av en grupp som anges i försäkringsavtalet (*gruppförsäkringsavtal*).
Pensionsförsäkring jämställs vid tillämpningen av denna lag med livförsäkring.
En försäkring som erbjuds en grupp och där premien helt eller delvis ska betalas av den försäkrade (*gruppförmånsförsäkring*) betraktas vid tillämpningen av denna lag som en individuell försäkring. (14.5.2010/426)
En pensionsförsäkring som en arbetsgivare har tecknat för en grupp arbetstagare och vars tilläggspensionsskydd inte har underställts lagen om pension för arbetstagare (395/61) (*icke formbunden arbetspensionsförsäkring*) skall dock vid tillämpningen av denna lag jämställas med gruppförsäkring trots att arbetsgivaren uppbär en del av premien hos arbetstagarna.
L om pension för arbetstagare 395/1961 har upphävts genom L 396/2006. Se L om pension för arbetstagare 395/2006.

[vi] I denna lag avses med
1) *öppenhetsdirektivet* Europaparlamentets och rådets direktiv 2004/109/EG om harmonisering av insynskraven angående upplysningar om emittenter vars värdepapper är upptagna till handel på en reglerad marknad och om ändring av direktiv 2001/34/EG,

2) *prospektdirektivet* Europaparlamentets och rådets direktiv 2003/71/EG om de prospekt som skall offentliggöras när värdepapper erbjuds till allmänheten eller tas upp till handel och om ändring av direktiv 2001/34/EG,
3) *marknadsmissbruksdirektivet* Europaparlamentets och rådets direktiv 2003/6/EG om insiderhandel och otillbörlig marknadspåverkan (marknadsmissbruk),
4) *direktivet om uppköpserbjudanden* Europaparlamentets och rådets direktiv 2004/25/EG om uppköpserbjudanden,
5) *direktivet om marknader för finansiella instrument* Europaparlamentets och rådets direktiv 2004/39/EG om marknader för finansiella instrument och om ändring av rådets direktiv 85/611/EEG och 93/6/EEG och Europaparlamentets och rådets direktiv 2000/12/EG samt upphävande av rådets direktiv 93/22/EEG,
6) *kommissionens prospektförordning* kommissionens förordning (EG) nr 809/2004 om genomförande av Europaparlamentets och rådets direktiv 2003/71/EG i fråga om informationen i prospekt, utformningen av dessa, införlivande genom hänvisning samt offentliggörande av prospekt och spridning av annonser,
7) *förordningen om genomförande av direktivet om marknader för finansiella instrument* kommissionens förordning (EG) nr 1287/2006 om genomförande av Europaparlamentets och rådets direktiv 2004/39/EG vad gäller dokumenteringsskyldigheter för värdepappersföretag, transaktionsrapportering, överblickbarhet på marknaden, upptagande av finansiella instrument till handel samt definitioner för tillämpning av det direktivet,
8) *kommissionens återköpsförordning* kommissionens förordning (EG) nr 2273/2003 om genomförande av Europaparlamentets och rådets direktiv 2003/6/EG när det gäller undantag för återköpsprogram och stabilisering av finansiella instrument.
[vii] Med *värdepapper* avses i denna lag värdepapper som är omsättningsbara och som har satts eller kommer att sättas i omlopp bland allmänheten tillsammans med flera andra värdepapper som utfärdats över identiska rättigheter. Det kan vara fråga om exempelvis
1) aktier i aktiebolag och motsvarande andelar i andra företag samt om depositionsbevis för sådana rättigheter,
2) obligationer och andra skuldförbindelser samt om depositionsbevis för sådana rättigheter,
3) andra värdepapper som ger rätt att förvärva eller sälja värdepapper som avses i 1 och 2 punkten samt om värdepapper som kan berättiga till kontant betalning som fastställs i relation till andra värdepapper, valutor, räntor eller avkastningar, råvaror eller andra index eller värden,
4) fondandelar enligt lagen om placeringsfonder (48/1999) och andra därmed jämförbara andelar i fondföretag.
Som värdepapper ska i denna lag dock inte betraktas rättigheter som ensamma för sig eller tillsammans med andra värdepapper medför rätt att besitta en viss lägenhet, en viss annan lokal eller fastighet eller en viss del av en fastighet.
[viii] Med *finansiella instrument* avses i denna lag
1) värdepapper enligt värdepappersmarknadslagen (746/2012),
2) sådana andelar i fondföretag och sådana penningmarknadsinstrument som inte är värdepapper enligt 1 punkten,
3) optioner, terminer och andra derivatinstrument som har värdepapper, valutor, räntor, avkastningar, något annat derivatinstrument, finansiella index eller andra finansiella mått som underliggande tillgång och som kan avvecklas fysiskt eller kontant,
4) optioner, terminer och andra derivatinstrument som har en nyttighet som underliggande tillgång och som måste eller kan avvecklas kontant,
5) optioner, terminer och andra derivatinstrument som har en nyttighet som underliggande tillgång och kan avvecklas fysiskt, om de omsätts på en reglerad marknad enligt lagen om handel med finansiella instrument eller på en multilateral handelsplattform,
6) andra än i 5 punkten avsedda optioner, terminer och andra derivatinstrument som har en nyttighet som underliggande tillgång och kan avvecklas fysiskt, om derivatinstrumentet upprättas i investerings- eller skyddssyfte och är av samma typ som andra derivatinstrument,
7) derivatinstrument för överföring av kreditrisk,
8) finansiella kontrakt avseende prisdifferenser,
9) optioner, terminer och andra derivatinstrument som har samband med klimatvariationer, fraktavgifter, utsläppsrätter eller inflationstakten eller någon annan officiell ekonomisk statistik och som kan avvecklas kontant samt andra derivatinstrument som avser tillgångar, rättigheter, skyldigheter, index och andra finansiella mått än de som nämns ovan och är av samma typ som andra derivatinstrument.

I förordningen om genomförande av direktivet om marknader för finansiella instrument föreskrivs det om särdragen hos finansiella instrument som avses i 1 mom. 6 punkten och om derivatinstrument som hör till tillämpningsområdet för 9 punkten.

[ix] Lagen tillämpas på affärsverksamhet genom vilken investeringstjänster tillhandahålls.

På verksamhetsutövare som för egen räkning handlar med finansiella instrument i enlighet med 11 § 3 punkten och som inte tillhandahåller andra investeringstjänster tillämpas lagen endast, om verksamhetsutövaren

1) erbjuder sig att fortlöpande handla för egen räkning genom att köpa och sälja finansiella instrument till priser som bestämts av verksamhetsutövaren själv, eller

2) handlar för egen räkning utanför en reglerad marknad enligt lagen om handel med finansiella instrument (748/2012) på ett organiserat, frekvent och systematiskt sätt genom att tillhandhålla ett system som är tillgängligt för tredje part i syfte att handla med denne.

[x] Med *investeringstjänster* avses i denna lag

1) mottagande och förmedling av order som avser finansiella instrument (*förmedling av order*),

2) utförande av order som avser finansiella instrument för kunders räkning (*utförande av order*),

3) handel med finansiella instrument för egen räkning (*handel för egen räkning*),

4) förvaltning av finansiella instrument enligt avtal med kunder på så sätt att egendomsförvaltaren helt eller delvis har getts rätt att besluta om placering av instrumenten (*kapitalförvaltning*),

5) personliga rekommendationer till kunder i fråga om transaktioner som avser vissa finansiella instrument (*investeringsrådgivning*),

6) ordnande av emission eller försäljning av finansiella instrument på grundval av ett fast åtagande (*garantiverksamhet för finansiella instrument*),

7) ordnande av emission eller försäljning av finansiella instrument utan fast åtagande (*placering av finansiella instrument*),

8) ordnande av handel med finansiella instrument på en multilateral handelsplattform enligt lagen om handel med finansiella instrument (*ordnande av multilateral handel*),

9) förvaring av finansiella instrument enligt lagen om värdepapperskonton (750/2012) samt verksamhet som kontoförvaltare enligt lagen om värdeandelssystemet och om clearingverksamhet, dock inte för egen räkning (*förvaring av finansiella instrument*).

[xi] Värdepappersföretag får i enlighet med sitt verksamhetstillstånd utöver investeringstjänster

1) bevilja kunder kredit och annan finansiering i samband med investeringstjänster,

2) tillhandahålla företag rådgivning om kapitalstruktur, företagsstrategi och andra frågor som har samband med dessa samt rådgivning och tjänster som gäller fusioner, företagsförvärv och andra omstruktureringar,

3) tillhandahålla valutatjänster i samband med investeringstjänster,

4) producera och tillhandahålla investerings- och finansanalyser samt andra motsvarande former av allmänna rekommendationer om handel med finansiella instrument,

5) tillhandahålla tjänster som anknyter till garantigivning och emission av finansiella instrument,

6) tillhandahålla investeringstjänster och tjänster motsvarande dem som avses i detta moment med sådana underliggande tillgångar till derivatinstrument som inte är finansiella instrument, när verksamheten har samband med verksamhet som bedrivs med derivatinstrument,

7) tillhandahålla annan förvaring av finansiella instrument än sådan som avses i 1 kap. 11 § 9 punkten,

8) bedriva annan verksamhet som är jämförbar med eller har ett nära samband med verksamhet som avses i detta moment.

Om ett värdepappersföretags verksamhetstillstånd ger rätt att tillhandahålla förmedling eller utförande av order, kapitalförvaltning eller investeringsrådgivning får företaget också i enlighet med tillståndet tillhandahålla tjänster som avser andra investeringsobjekt än finansiella instrument samt investerings- och finansieringsrådgivning som avser sådana objekt. Om värdepappersföretagets verksamhetstillstånd ger rätt att tillhandahålla förvaring av finansiella instrument får det i enlighet med tillståndet tillhandahålla också tjänster som avser andra investeringsobjekt än finansiella instrument.

[xii] I denna lag avses med

1) *fondverksamhet* anskaffning av medel från allmänheten för kollektiva investeringar och investering av medlen huvudsakligen i finansiella instrument eller i fastigheter och fastighetsvärdepapper samt förvaltning av placeringsfonder och specialplaceringsfonder och marknadsföring av fondandelar, (29.12.2011/1490)

2) *placeringsfond* tillgångar som anskaffats genom fondverksamhet och investerats i enlighet med 11 kap. och med de stadgar som har fastställts i Finland samt förpliktelser som följer av dessa tillgångar, (29.12.2011/1490)

2 a) *specialplaceringsfond* tillgångar som anskaffats genom fondverksamhet och investerats i enlighet med 12 kap. och med de stadgar som har fastställts i Finland samt förpliktelser som följer av dessa tillgångar, (29.12.2011/1490)
2 b) *matarfond* en placeringsfond av vars tillgångar, med avvikelse från 68 §, 69 § 1 mom., 71 och 71 a §, 72 § 5 och 6 mom., 73 §, 74 § 3 mom., 75 § och 80 § 1 mom., minst 85 procent investeras i andelar i en annan placeringsfond eller ett fondföretag (mottagarfond), (29.12.2011/1490)
2 c) *mottagarfond* en placeringsfond som har minst en matarfond bland sina fondandelsägare, som inte själv är en matarfond och vars tillgångar inte har investerats i andelar i en matarfond samt ett fondföretag som enligt lagstiftningen i sin hemstat uppfyller krav som motsvarar de ovannämnda, (29.12.2011/1490)
3) *fondbolag* ett finskt aktiebolag som huvudsakligen bedriver fondverksamhet,
3 a) *fondbolags värdstat* en EES-stat, utom Finland, som inte är fondbolagets hemstat men där fondbolaget har en filial eller tillhandahåller tjänster, (29.12.2011/1490)
3 b) *placeringsfonds EES-värdmedlemsstat* en EES-stat, utom Finland, som inte är placeringsfondens hemstat men där placeringsfondens andelar marknadsförs, (29.12.2011/1490)
4) *förvaringsinstitutsverksamhet* förvaring av en placeringsfonds eller specialplaceringsfonds tillgångar och övervakning av att lagen, andra bestämmelser och föreskrifter samt fondens stadgar iakttas inom verksamheten, (29.12.2011/1490)
5) *förvaringsinstitut* en sammanslutning som bedriver förvaringsinstitutsverksamhet,
6) *fondandel* en av flera lika stora andelar eller minst en bråkdel av en andel i en placeringsfond eller specialplaceringsfond, (29.12.2011/1490)
7) *fondandelsägare* en person, en sammanslutning eller en stiftelse eller en med dessa jämförbar utländsk fysisk eller juridisk person som äger en eller flera fondandelar eller en bråkdel av en fondandel,
8) *värdepapper* värdepapper som avses i 2 kap. 1 § i värdepappersmarknadslagen (746/2012), (14.12.2012/765)
8 punkten har ändrats genom L 765/2012, som träder i kraft 1.1.2013. Den tidigare formen lyder:
8) *värdepapper* bevis enligt definitionen i 1 kap. 2 § värdepappersmarknadslagen,
9) *fondföretagsdirektivet* Europaparlamentets och rådets direktiv 2009/65/EG om samordning av lagar och andra författningar som avser företag för kollektiva investeringar i överlåtbara värdepapper (fondföretag), (29.12.2011/1490)
10) *fondföretag* ett företag för kollektiva investeringar som har fått auktorisation i någon annan EES-stat än Finland och som enligt lagstiftningen i sin hemstat uppfyller villkoren i fondföretagsdirektivet, (29.12.2011/1490)
10 a) *annat fondföretag än ett sådant som avses i fondföretagsdirektivet* ett utländskt företag för kollektiva investeringar som enligt lagstiftningen i sin hemstat inte uppfyller villkoren i fondföretagsdirektivet, (29.12.2011/1490)
10 b) *utländskt EES-fondbolag* ett bolag enligt fondföretagsdirektivet som i någon annan EES-stat än Finland har fått auktorisation som motsvarar det verksamhetstillstånd för fondbolag som avses i 5 a §, (29.12.2011/1490)
10 c) *fondbolag från tredjeland* en sammanslutning som i en annan stat än en EES-stat av en behörig tillsynsmyndighet som motsvarar Finansinspektionen har beviljats auktorisation som motsvarar verksamhetstillstånd enligt 5 a § för verksamhet som motsvarar den som avses i 5 § 2 mom., (29.12.2011/1490)
11) *utländskt EES-fondbolags hemstat* den EES-stat, utom Finland, där ett fondbolag enligt stadgarna har sin hemort, (29.12.2011/1490)
11 a) *fondföretags hemstat* den EES-stat, utom Finland, där ett fondföretag beviljats auktorisation som motsvarar det tillstånd som avses i 18 c § 1 mom., (29.12.2011/1490)
12) *finansiella instrument* finansiella instrument enligt 1 kap. 10 § i lagen om investeringstjänster, penningmarknadsinstrument och inlåning i kreditinstitut, (14.12.2012/765)
12 punkten har ändrats genom L 765/2012, som träder i kraft 1.1.2013. Den tidigare formen lyder:
12) *finansiella instrument* de finansiella instrument som avses i 4 § i lagen om värdepappersföretag, penningmarknadsinstrument och inlåningar i kreditinstitut. (26.10.2007/928)
13) *penningmarknadsinstrument* skuldförbindelser som normalt omsätts på penningmarknaden samt är likvida och har ett värde som vid varje tidpunkt exakt kan fastställas, (2.4.2004/224)
13 a) *fastighet och fastighetsvärdepapper* vad som föreskrivs i 3 § i lagen om fastighetsfonder (1173/1997), (30.3.2007/351)
14) *OTC-derivatinstrument* andra derivatinstrument än sådana som är föremål för handel på en sådan reglerad marknad som avses i lagen om handel med finansiella instrument (748/2012) eller på någon

annan reglerad marknadsplats som fungerar fortlöpande samt är erkänd och öppen för allmänheten, (14.12.2012/765)
14 punkten har ändrats genom L 765/2012, som träder i kraft 1.1.2013. Den tidigare formen lyder:
14) *icke-standardiserade derivatinstrument* andra derivatinstrument än standardiserade derivatinstrument som avses i 1 kap. 2 § i lagen om handel med standardiserade optioner och terminer (772/1988) eller derivatinstrument enligt 10 kap. 1 a § i värdepappersmarknadslagen som jämställs med standardiserade optioner och terminer, (29.12.2011/1490)
15) *betydande bindning* bundenhet enligt 37 § 2–4 mom. i kreditinstitutslagen (121/2007), (29.12.2011/1490)
16) *gränsöverskridande fusion*
a) en fusion av placeringsfonder eller fondföretag där åtminstone en fond eller ett företag har etablerats i Finland och en fond eller ett företag i en annan EES-stat än Finland, eller
b) en fusion av placeringsfonder som är etablerade i Finland med ett nygrundat fondföretag som är etablerat i en annan EES-stat än Finland eller en fusion av fondföretag som är etablerade i samma EES-stat, dock inte Finland, med en nyinrättad placeringsfond som är etablerad i Finland, (29.12.2011/1490)
17) *inhemsk fusion med internationell koppling* en fusion av placeringsfonder som är etablerade i Finland, när en anmälan enligt 127 § har gjorts om marknadsföring av minst en av de deltagande placeringsfondernas fondandelar i en annan EES-stat än Finland, (29.12.2011/1490)
18) *EES-stat* en stat inom Europeiska ekonomiska samarbetsområdet, (29.12.2011/1490)
19) *filial* ett driftställe som ett fondbolag har utanför Finland och ett driftställe som ett utländskt EES-fondbolag eller ett fondbolag från tredjeland har i Finland, när driftstället inte är en juridisk person men är en del av fondbolaget, det utländska EES-fondbolaget eller fondbolaget från tredjeland och tillhandahåller tjänster som fondbolaget har auktorisation att tillhandahålla, (29.12.2011/1490)
20) *behöriga myndigheter* de myndigheter utsedda av någon annan EES-stat än Finland som ska se till att skyldigheterna enligt fondföretagsdirektivet fullgörs och som EES-staten i fråga har underrättat Europeiska kommissionen om. (29.12.2011/1490)
Vid tillämpningen av 1 mom. 19 punkten ska alla driftställen som ett fondbolag har inrättat i samma EES-stat eller samma tredjeland och alla driftställen som ett utländskt EES-fondbolag eller ett fondbolag från tredjeland har inrättat i Finland betraktas som en enda filial. (29.12.2011/1490)
Det som i denna lag föreskrivs om fondandelar i placeringsfonder tillämpas också på andelar i fondföretag. (29.12.2011/1490)
[xiii] 348/87, Stichting Uitvoering Financiële Acties, paragraph 13.
[xiv] Case 235/85 *Commission* v *Netherlands*, paragraph 18, and 348/87 *Stichting Uitvoering Financiële Acties,* paragraph 11.
[xv] Med värdepapper avses i denna lag
1) aktier och interimsbevis för aktier,
2) andelsbevis i ekonomiska sammanslutningar, grundfondsbevis i sparbanker och placeringsandelsbevis i andelsbanker samt interimsbevis för dessa,
3) sådana av samfund utfärdade skuldebrev eller andra fordringsbevis för vilka räntan bestäms enligt resultatet eller dividendens storlek eller vilka berättigar till del i årsvinsten eller överskottet, samt
4) bevis över teckningsrätt till värdepapper som avses i 1-3 punkten och överlåtelsehandlingar som gäller en sådan rätt.
Såsom värdepapper anses också värdeandelar som motsvarar ovan nämnda värdepapper.
[xvi] Paragraf 15a: Skatt ska inte betalas på överlåtelse mot ett fast penningvederlag av värdepapper som har tagits upp till regelbunden handel som är öppen för allmänheten
1) på en reglerad marknad enligt lagen om handel med finansiella instrument (748/2012),
2) på en annan reglerad och myndighetsövervakad marknad i en sådan stat utanför Europeiska ekonomiska samarbetsområdet som har godkänt konventionen om ömsesidig handräckning i skatteärenden, eller
3) på en multilateral handelsplattform enligt lagen om handel med finansiella instrument, under förutsättning att de värdepapper som bolaget emitterat har tagits upp till handel på bolagets ansökan eller med dess samtycke och att värdepapperen har överförts till ett värdeandelssystem enligt lagen om värdeandelssystemet och om clearingverksamhet (749/2012) eller ett motsvarande utländskt registersystem.
[xvii] För skattefrihet krävs att förmedlare av eller part i överlåtelsen är ett värdepappersföretag, ett utländskt värdepappersföretag eller en annan tillhandahållare av investeringstjänster enligt lagen om investeringstjänster (747/2012) eller att förvärvaren är godkänd som handelspart på den marknad där överlåtelsen sker. (14.12.2012/775)

[xviii] Skattefriheten gäller inte
1) en överlåtelse som grundar sig på ett sådant bud som har lagts efter det att den handel med värdepapper som avses i 1 mom. har avslutats eller innan handeln har börjat, om det inte är fråga om sådan försäljning av bolagets gamla aktier som direkt ansluter sig till en aktieemission i samband med noteringen och som grundar sig på ett kombinerat köp- och teckningserbjudande samt där föremålet för överlåtelsen specificeras först efter det att handeln har börjat och priset motsvarar priset på nya aktier,
2) en överlåtelse som sker för att fullgöra inlösningsskyldighet som föreskrivs i 18 kap. i aktiebolagslagen (624/2006) i enlighet med 6 § i nämnda kapitel,
3) en överlåtelse där vederlaget delvis eller helt består av en arbetsinsats, och inte
4) en överlåtelse som sker i form av kapitalinvestering eller utdelning av medel.
Om det är uppenbart att det uteslutande eller huvudsakliga syftet med bolagets ansökan om att värdepapperen ska tas upp till handel i situationer som avses i 1 mom. 3 punkten har varit att undvika skatt, ska det bestämmas att förvärvaren ska betala den obetalda skatten. Också överlåtaren ansvarar för skatten. Detsamma gäller på motsvarande sätt om bolaget har gett sitt samtycke till att värdepapperen tas upp till handel.
[xix] Statliga skatter och avgifter
Om statsskatt bestäms genom lag, som skall innehålla bestämmelser om grunderna för skattskyldigheten och skattens storlek samt om de skattskyldigas rättsskydd.
Bestämmelser om avgifter samt de allmänna grunderna för storleken av avgifter för de statliga myndigheternas tjänsteåtgärder, tjänster och övriga verksamhet utfärdas genom lag.