CIT return: reporting dividend in correct month (2/51/20)

The Corporate Income Tax Act provides for taxing a company's profits when they are distributed, i.e. dividends are part of the taxable base. Yet the wording raises some practical questions. This article explores how the timing of a dividend calculation affects the period in which the profit distribution should be reported on the tax return.

Dividends

Section 4(2)(1)(a) of the CIT Act provides that a company's taxable base includes any profit it distributes, i.e. dividends, including any interim dividends. Suppose the general meeting of shareholders resolves to distribute a profit in April but the accountant calculates a dividend in May. Which monthly tax return is that dividend supposed to appear on? It might also happen that the company has got no cash to pay the dividend when the resolution is passed, and the accountant does not calculate it until a few months later, when the company has got some cash to pay it.

The CIT Act and the Cabinet of Ministers' Rule No. 677, which explains the application of the CIT Act, are silent on the period of dividend calculation. So we need to examine provisions of the CIT Act in the light of the legislature's intention and provisions of the Commerce Act.

An annotation to the CIT Act explains that the new model provides for postponing the tax payment until the profit is distributed or otherwise made available for any expenses that do not contribute to the company's future development. The annotation offers an example where a company made a profit of EUR 2,000 in 2018. The general meeting decides that half the profit can be distributed to the shareholders (individuals) in dividends. This results in a taxable base of EUR 1,000 (gross) attracting a 20% CIT. The company is to remit EUR 200 to the government and EUR 800 to the shareholders. Accordingly, the legislature's intention is to tax the dividend in the tax period of the dividend resolution.

Section 161(1.1) of the Commerce Act provides that a dividend is declared by resolution of the general meeting. Section 161(5) states that a dividend is payable only in cash based on the dividend resolution. So, only the shareholders have the power to pass the dividend resolution that provides a legal basis for paying the dividend. The accountant merely makes an arithmetic calculation based on the resolution. Accordingly, the legislature's intention implies that the period of dividend calculation for CIT purposes is linked to the period of the dividend resolution.

That would cause a delay in calculating and paying CIT on dividends, contrary to the legislature's intention.

Also, on page 3 of their guidance "Procedures for completing the CIT return" the SRS says that tax is payable on a dividend when it is calculated (the dividend resolution passed) regardless of when the dividend is actually remitted to the shareholders.

Accordingly, the dividend should be reported on the tax return for the month in which the general meeting resolved to distribute the profit. If the resolution is passed in April but the accountant calculates the dividend in May, it should be reported on the CIT return for April.