

Employee Stock Options in the EU and the USA

FINAL REPORT

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Finland

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Finland

1. General remarks

1.1 History

- 1.1.1 The first stock option plans started to emerge on the Finnish market in the late 1980s, mainly around 1987. The number of new stock option plans increased throughout the 1990s, especially amongst Finnish publicly listed companies. Stock option plans, which were directed to all employees, started to emerge in 1998¹. As a general phenomenon, the larger companies tend to target their stock option plans to management and to key personnel, and the smaller companies more often offer stock options to all employees. During the 1990s, stock option plans became more diverse with respect to their terms and conditions. In addition to defining the share (subscription) price, new elements, e.g. comparison with the peers and various industry average thresholds were introduced in stock option plans².
- 1.1.2 When Finnish companies started to implement the first stock option plans in the late 1980s, the legislation governing stock option plans was largely non-existent, and stock option taxation was based on the general principles of taxation. Prior to 1 September 1997, a stock option plan required a bond loan, i.e. an arrangement where the employee lent the company money in exchange for stock options. This was abolished by a change to the Corporate Act (Osakeyhtiölaki 145/1997). The first reference to stock options was included in the Income Tax Act in 1993. In 1994, the Income Tax Act was amended and the current concept of “employment-related stock option” was introduced. The amendment also broadened the scope of employment-related stock options to cover both the stock of the employing company and stock of another company in the same group (in practice, the stock of the parent company).

1.2 Current situation

- 1.2.1 In 1997, a provision regarding gifting and transferring stock options to close relatives was included in the Income Tax Act. In the 1990s, stock option taxation was largely developing by the precedents of the Supreme Administrative Court. The first written guidelines from the Finnish Tax Administration were published in 1999. These guidelines clarified the taxation of vested stock options for wealth tax purposes. The Income Tax Act was amended in 2000 and stock option gains derived from working abroad were to be considered to be taxable income in Finland, unless an exemption applied.³

¹ General practice. “Owner’s gain – everybody’s gain?” – published by ETLA, The Research Institute for the Finnish Economy

² General practice

³ Legislative changes:

Corporate Act amendment (OYL 145/1997)

Income Tax Act (TVL amendments: 1465/1994 584/1997 1165/2000)

Case Law:

Supreme Administrative Court precedents: KHO 1994 B 523 KHO 1997:33 KHO 1998:56

- 1.2.2 The changes to wealth tax have significantly impacted the holding of vested but unexercised options, see sections 3.1 and 3.2. Changes to withholding rules were introduced as of 1 January 2002, largely as a result of the amount of tax on stock options paid after the end of the tax year.
- 1.2.3 A clear majority of publicly listed companies have implemented one or more stock option plans. Stock option plans are not aimed at particular types of company. Stock option plans are most typical in companies which have a substantial amount of foreign ownership. Most IT-sector companies have stock option plans; the main goal of stock option plans is recruitment and retention of skilled employees. Due to the economic downturn in 2000, it is difficult to assess how well the goals have been met.

2. Key features of stock option plans

- 2.1 There is no minimum or maximum term for stock options under Finnish legislation.
- 2.2 The grant of options is entirely at the company's discretion. However, for newly issued shares, the Company Act, Para 4:2a requires that there must be significant reason to take away shareholders' rights to new shares in favour of granting options to the employees. In addition, certain company officials, even if they do not have an employment relationship with the company granting the options, are deemed to be in a similar position as the employees with regards to employment-related stock options⁴.
- 2.3 The employer can select employees to be included in the plan and does not need to treat all employees on similar terms, as long as the employer can prove that there is justifiable cause for the different terms of employment⁵. This is not in breach of legislation against discrimination (see section 6.2).
- 2.4 There are no restrictions on the nature or value of the shares over which options may be granted under a stock option plan, and there is no restriction on the type of company that may grant options.

KHO 2001:1512

Finnish Tax Administration guidelines on Stock Option Taxation 7/1999, published on May 31, 1999 (1598/31/1999)

Wealth Tax Issues concerning Stock Options (2090/39/2001), July 12, 2001
Guidelines (1614/31/2002), June 20, 2002

⁴ Supreme Administrative Court Decision (KHO 20.5.1997/taltio 1221)

⁵ Employment Contract Act 2:2 § (55/2001)
Act on Equal Rights 8² § (609/1986)

3. Taxation

3.1 Time of taxation

- 3.1.1 Stock options are generally taxable at exercise⁶.
- 3.1.2 However, if the employee has vested, but unexercised stock options in his/her possession at the end of a tax year (31 December), such stock options are deemed to be taxable wealth, and depending on the total net wealth of the employee, may be subject to wealth tax⁷.
- 3.1.3 Taxes on exercise are primarily paid under withholding (see section 5.2). If insufficient tax has been withheld, the additional tax is paid following the normal taxation process. Taxes are paid in two parts, the first part in December in the year following the tax year of exercise and the second in February of the next year. These payments are referred to as residual payments. Interest is paid on residual tax at 2% up to €10,000. Since 1 January 2002, if the residual payments are in excess of €10,000, the interest is 6%⁸. The rates vary from time to time and are linked to the Ministry of Finance's reference rate. Interest on residual tax is payable from 1 April to December, when the first part is paid.
- 3.1.4 To avoid paying interest on the residual payments the employee can make a voluntary supplementary payment of taxes. The payment must be made by 31 March of the assessment year (i.e. the year following the income year). The supplementary payment is made using a specific bank transfer form (VEROH 5115A) to the bank account of Uusimaa Regional Tax Office (it is also possible to use an automatic transfer machine or home banking).

3.2 Taxable gain

- 3.2.1 If the employee has vested, but unexercised stock options in his/her possession at the end of the tax year (31 December), they are deemed to be taxable wealth and depending on the total net wealth of the employee, subject to wealth tax. Taxable net wealth is calculated as the employee's taxable assets, less the debts. If the total net wealth at the end of a tax year exceeds €185,000, wealth tax is payable. The taxable value of publicly listed, vested stock options is depreciated to 70% of their quoted value. The wealth tax is payable at the same time as the normal tax payment (i.e. in December of the year following the tax year, and in the next February).

⁶ Income Tax Act 66§

Finnish National Board of Taxation, Regulation Dnro 164/31/2002 (June 20, 2002)

⁷ Wealth Tax Act (1537/1992) 3§

⁸ Act on Taxation Process (1558/1995)

- 3.2.2 At exercise the taxable gain is the difference between the fair market value (“FMV”) of the shares on the date of exercise and the sum of the exercise price paid for shares and price paid for options (if any)⁹. In the case of publicly listed shares, the FMV is usually deemed to be the average exchange rate of the shares on the date of exercise. The average exchange rate is the gross turnover of the day divided by the trade volume of the day. A valuation issue may exist, if the shares were not traded or are unlisted.
- 3.2.3 If the stock option is sold to a third party, the taxable gain is the sales proceeds of the stock option less any price paid for the option.
- 3.2.4 If the employee has paid money for the grant of stock option, and the option expires without being exercised, the employee is entitled to claim a deduction in income tax as the cost is deemed to be fully deductible as a necessary expense in acquiring taxable income¹⁰.
- 3.2.5 Wealth tax payable on vested but unexercised options is not deductible against the gain when the options are exercised.

3.3 Type of tax

- 3.3.1 Wealth tax is levied on the taxable net wealth (assets less debts) according to the following table¹¹:

Stipulated limit	Tax on the stipulated limit	Tax on the excess
€185,000	€80	0.9%

- 3.3.2 Example: If the employee has taxable assets worth €250,000 (not including options over listed shares), and debts of €50,000, the total taxable net wealth is (€250,000 – €50,000), €200,000. The employee has to pay wealth tax on the part exceeding the stipulated limit, i.e. on €15,000, (€200,000 - €185,000). The wealth tax is €80 + (0.9% * €15,000) = €215¹².
- 3.3.3 There are no social security contributions at vesting for the employee.
- 3.3.4 On exercise state income tax, municipal tax and church tax (for church members only) and employee’s health insurance contribution are applicable.
- 3.3.5 State income tax rates vary between 13% and 36%.

⁹ Income Tax Act 66^{3§}

¹⁰ Supreme Administrative Court decision KHO 1997/33

¹¹ Act on Tax Rates for 2002 (1243/2001)

¹² Wealth Tax Act 26a§ (1085/2000)

3.3.6 Municipal tax rates vary between 15% – 19.75% and church tax rates vary between 1 and 2%. The employee's health insurance contribution is 1.5%. The maximum tax rate including all tax items and the employee's insurance premium is 59.15%. The tax rates are the same for single and married persons (with or without children).

3.3.7 The health insurance contribution is actually income tax by nature and is included in the percentage of the employee's personal withholding tax, is not tax deductible (unlike other social security contributions) from the gross income and is levied in the final taxation if not previously withheld.

3.4 Capital gains taxation

3.4.1 Tax may arise on the sale of shares¹³.

3.4.2 When the employee sells the shares acquired on exercise of the options, he/she is taxed according to the rules concerning capital gains (and losses). Any capital gain is regarded as investment income, which is taxed at a flat rate of 29%¹⁴.

3.4.3 Capital gains tax is payable on the smaller of:

- The sales price less the sum of the price paid for the shares and the option benefit taxed at exercise and any transaction costs;
- The difference between the sales price and 20% (the so-called presumed purchase price) of the sales price (that is 80% of the sales price is taxable). If the presumed purchase price is used, no other costs relating to acquiring or selling of the shares, such as transaction costs or tax on exercise, can be deducted. If the employee has owned the shares for at least ten years, the applicable presumed purchase price is 50% of the sales price. The ownership of the shares acquired on option exercise is deemed to commence at the date of grant of the options.

3.4.4 If the first method of calculation results in a loss it is a capital loss, which is deductible against capital gains derived from the sale of property in the same calendar year and the following three calendar years¹⁵. If no capital gains occur within this time period, the capital loss remains unused. The capital loss has to be claimed in the annual tax return form for the year in which the shares were sold.

3.4.5 No social security contributions for the employee are payable at the date of sale.

¹³ Income Tax Act 32 § (1535/1992)

¹⁴ Income Tax Act 124§

¹⁵ Income Tax Act 50§

3.5 Tax consequences for the granting company

3.5.1 Social security contributions

3.5.1.1 No social security contributions for the employer are due on the grant or vesting of the option.

3.5.1.2 However the employer must pay employer's social security contributions on the stock option benefit arising at exercise. Unlike regular salary, the stock option benefit is not subject to employer or employee pension and unemployment insurance premiums, nor to employer statutory accident insurance and group-life contributions. (The Finnish Pension System dictates that certain payments must be excluded from contributions).

3.5.1.3 The amount of the employer's social security contributions applied in the private sector varies between 2.95% - 6.05%¹⁶, depending on the ratio between the amount of depreciation from fixed assets subject to wear and tear for corporate taxation purposes and the amount of gross salaries paid by the employer. The rate is determined according to the following table:

Depreciation	Depreciation as a percentage of salaries	Rate
<€50,500	Of no account	2.95%
>€50,500	Depreciation <10%	2.95%
>€50,500	10%<depreciation<30%	5.15%
>€50,500	Depreciation > 30%	6.05%

3.5.1.4 The employer's social security contribution is payable with the payment of withholding tax (see section 5.2 below). If the option benefit is divided into equal parts for the remaining calendar months, the employer's social security contribution can also be paid monthly on this basis, see section 5.2.

3.5.1.5 If the company that was the employer at the date of grant of the options no longer pays any cash salary to the employee at the date of exercise (e.g. due to termination of employment or pension), the total amount of the employer's social security contribution must be paid in the month following the exercise of the options (i.e. at the latest on the 10th day of the second month following the option exercise). The company, which granted the options, is still liable to pay the social security contributions, as the stock option income is deemed to be derived from the original employment relationship.

¹⁶ Act of Employer's Social Security Charge 1§ (366/1963)

3.5.1.6 It should be noted that if the monthly cash salary payable to the employee is wholly used for income tax withholding (e.g. as a result of option exercises), the employer would not be able to collect the employee's pension and unemployment insurance contributions (4.4 % and 0.4 %) payable on other salary. Since these contributions are nevertheless statutory payments for the employee, unless the employee pays them as separate payments to the employer, the employer will be liable to pay them and those contributions will be considered as taxable salary for the employee. In practice this does not cause tax consequences to the employee, as he/she can deduct the same amount in calculating taxable salary. However, the employer must pay the employer's social security charge also on this additional salary.

3.5.2 *Corporate tax deduction*

3.5.2.1 The employing company may be entitled to claim a deduction against its profits liable to corporation tax for the costs of an option plan¹⁷.

3.5.2.2 There are no specific tax rules in Finland governing the tax deductibility of stock option benefits offered to employees. In practice only costs actually incurred by the company are likely to be deductible, i.e. the cost of purchasing shares to the extent the cost exceeds payments made by the employee for the option and on option exercise. Administration costs and establishment costs of setting up the plan and employer's social security are also tax deductible. No deduction is available in respect of the lost opportunity costs when issuing new shares.

3.5.2.3 Tax deductions are made when the actual expenditure is paid out. The deduction is claimed in the annual tax return.

3.5.2.4 This is not affected by whether or not costs are recharged to/from another group company.

3.5.3 *Other*

3.5.3.1 VAT has no impact on the operation of stock option plans.

3.5.3.2 If the stock options are transferable to a third party, and they are sold outside a stock exchange, the sale is subject to a transfer tax of 1.6% on the sales price. Usually the buyer is liable to pay the transfer tax.¹⁸

4. Issues for employees

4.1 Reporting obligations

4.1.1 Employees have no reporting obligations in relation to the grant of options.

¹⁷ Corporate Tax Act 7 § (360/1968)

¹⁸ Act on Transfer Tax 20 § (931/1996)

- 4.1.2 Employees will have reporting obligations in relation to vested options, if they are liable to wealth tax (see section 3.3).
- 4.1.3 Stock options are declared in the annual tax return or added to the tax. The annual tax return is due on the 31 January of the year following the tax year. If the employee is in the so-called tax proposal system, where the tax authorities send a pre-filled tax return to be checked, the due date is approximately 15 June in the year following the tax year (the actual date is confirmed annually by the tax authorities)¹⁹.
- 4.1.4 Employees have reporting obligations in relation to the exercise of an option. The employee has to report the number of stock options exercised, the date of exercise and the taxable gain. The information is given by completing the annual tax return form, or adding the information to the tax proposal.
- 4.1.5 Employees will also have reporting obligations in relation to sale of the shares. The employee has to report the number and type of shares sold, the acquisition date and acquisition price, and the sales price, plus the expenses incurred. The information on sale of shares is reported on the annual tax return form (or in case of tax proposal system, added to the tax proposal, if missing).

4.2 Cashflow issues

- 4.2.1 There are no methods used to alleviate any cash flow problems for employees as a result of incurring the tax liability.

4.3 Change in employee's residence status

- 4.3.1 Wealth tax (on vested unexercised options) is only applicable if the employee is resident in the relevant tax year. Thus a change in the employee's residence status has no impact on this.
- 4.3.2 If the employee was tax resident at grant or exercise or at any time in between, but not throughout the ownership of the option, Finland will apply a so-called "time apportionment" principle and tax stock option gains only in proportion to time spent in Finland during the period from grant to exercise compared to the total time from grant to exercise²⁰.

5. Issues for employers

5.1 Reporting obligations

- 5.1.1 Employers have no reporting obligations in relation to the grant or vesting of options regardless of whether the cost of the option is recharged to the subsidiary employing company.

¹⁹ Act on Taxation Process (1558/1995)

²⁰ Supreme Administrative Court decisions KHO 1998/2148, KHO 1988/2199

- 5.1.2 The local employer is required to report the taxable gain of the exercise of stock options. In practice such income will be reported on the monthly pay slip as a fringe benefit.
- 5.1.3 The employer has to report the taxable gain as salary in the monthly declaration by using the tax authorities' form VeroH 7611. In addition to this, the employer has to report to tax authorities all taxable stock option gains annually by using the forms VeroH 7800 and VeroH7801. The employer's monthly notice is due by the 15th of the second month following the date of exercise. The annual summary is due by 31 January on the year following the exercise²¹.
- 5.1.4 The Ministry of Finance made a proposal in 2001 to amend current tax laws, and add a reporting obligation for employers launching new stock option plans. This proposal did not lead to any concrete measures, and it was subsequently dropped.
- 5.1.5 Employers have no reporting obligations with respect to the sale of shares.

5.2 Withholding obligations

- 5.2.1 The local employer also has a withholding obligation in relation to the exercise of an option. According to article 13 of the Withholding Act, the employment-related option benefit is regarded as salary income. The amount of withholding tax is calculated for gross monthly salary income according to each employee's tax card percentages and withheld from the employee's cash salary. The option benefit is added to the employee's monthly salary subject to withholding tax in the month following the exercise or sale of options. If the amount of withholding tax exceeds the amount of cash salary payable, the option benefit is divided into equal parts for the remaining calendar months of the year. There is no cap on the amount of withholding tax, and the whole amount of cash salary may be withheld.
- 5.2.2 To the extent that the tax due cannot be withheld, the tax is payable as residual tax or the employee can make a voluntary supplementary payment (see section 3.1 above).
- 5.2.3 The employer must pay the withheld salary to the regional tax office's bank account. Tax withheld on the stock option benefit must be remitted by the 10th day of the second month following the date of exercise.
- 5.2.4 Employers do not have any withholding obligations at the point of sale.

²¹ Act on Taxation Process (1558/1995)

6. Legal issues

6.1 Process/timeframe

6.1.1 The timeframe for implementation of a stock option plan depends largely on the organisational structure and the size of the company granting the options and on its previous experience of implementing such stock option plans. In major companies, we estimate that the implementation process from commencing drafting the plan rules to the grant of options takes approximately six to ten months. In smaller companies, the timeframe is shorter, and in our view the implementation process can usually be completed in approximately three to six months, and in some cases even within one month²².

6.1.2 The main procedures involved in establishing a plan are as follows²³:

- Assessing the need for a stock option plan.
- Drafting of rules. Depending on the extent of the stock option plan, this process may require the use of external consultants (tax and legal).
- The board of directors will make a proposition to the shareholder's general meeting to approve the stock option plan and its terms and conditions.
- In addition to the board of director's proposal, a statement from the accountants of the company is required.
- If the plan is accepted by the annual general meeting, it may be necessary to file a prospectus, (see section 6.4 below).
- Depending on the extent of the stock option plan and on how detailed the shareholder's annual general meeting resolution has been, the stock option plan may require additional administrative work mainly in identifying the employees who will be eligible to participate.
- After identification of the participants, the stock option plan is offered and after the employee has accepted the offer, the grant can take place.
- It is customary for the board of directors formally to approve the final participants in a stock option plan by resolution.

²² General practice

²³ Securities Market Act (495/1989) Financial Supervision Authority: 11 February 2002 Interpretation of the provision on securities offering in the Securities Market Act (K/41/2002/PMO) 11 February 2002 Interpretation of the provisions on tender offers and redemption offers in the Securities Market Act (K/44/2002/PMO), and Appendix: Minimum requirements of the offer documentation

6.2 Employment law

- 6.2.1 The employing company usually grants stock options unilaterally and options do not form any part of the employment contract between the employer and the employee. In addition to this, participation in a stock option plan is voluntary. As such, there is no legal requirement to consult a trade union or its representatives prior to implementing stock option plan²⁴.
- 6.2.2 The law governing all employment relationships in Finland, the Employment Contract Act, includes a general clause on non-discrimination. In addition to this general clause, there is a specific law on non-discrimination between the genders. It is possible that if a stock option plan is deemed to be gender-biased, that it might be found to be in violation of the Act on Equal Rights²⁵.
- 6.2.3 There is no court practice where an employee has been awarded stock options and is subsequently dismissed, unfairly or unlawfully, on the possibility of making a claim for damages against the value of the options. However as stock option plans usually are unilaterally granted by the employer, and they are not deemed to form any part of an employee's employment contract, it is in our opinion unlikely that such claim for damages on the basis of unfair or unlawful dismissal would succeed.

6.3 Data protection

- 6.3.1 Data Protection Act (523/1999) ("DPA") contains certain provisions which have to be taken into account when setting up a share plan register. The provisions of the DPA do not usually hinder the operation of stock option plans. However, paragraph 22 of the DPA restricts the transfer of information outside the EU/EEA area, if the level of data protection in the destination country is not comparable to standards within EU/EEA area²⁶.
- 6.3.2 The penalties and implications of data protection law contravention depend on the gravity of the deed, and penalties are stipulated in both the DPA as well as in the general Criminal Act. The penalties are typically fines. If the data protection laws have been contravened, the registrar may be subject to paying damages for any damage incurred. According to general principles of criminal law, the criminal penalties are imposed on the responsible management (mainly the CEO) of the company violating the data protection laws. The company violating the data protection laws is liable for the economic sanctions, such as damages²⁷.
- 6.3.3 An appointed government official, the data protection ombudsman, supervises data protection laws. He/she may take action if data protection laws may have been violated, or, if it is possible that data laws have not been properly applied. However, in practice it is rare that the officials initiate action, and usually the party whose rights have been breached takes up data protection cases.

²⁴ General principles of Finnish labour law

²⁵ Employment Contract Act 2:2§ (55/2001)
Act on Equal Rights 8²§ (609/1986)

²⁶ Data Protection Act (523/1999)

²⁷ Data Protection Act 48s (523/1999), Criminal Act Chapter 38 and paragraph 40:5

6.4 Stock exchange issues

6.4.1 If the offer of securities is deemed to be made “to the public”, a prospectus has to be approved by the Financial Supervision Authority²⁸. Usually the offer is not deemed to be made to the public unless it is offered to 100 or more people, or the aggregate value of the securities offered exceeds €42,000. If a prospectus has to be prepared, it has to include the following information:

- Information about the prospectus (the scope of the public offering).
- Information about the issuing company.
- An assurance regarding the contents of the prospectus.
- A summary of the stock option plan.
- The conditions of the stock option plan.
- Instructions to the Participants regarding the practical implementation of the offering.
- Information about the publication of announcements to participants and announcements of price of the security.
- Information regarding the Finnish tax treatment of securities.
- Information about rights and liabilities related to the stock.
- List of the major shareholders.
- The price development of the shares during the last five years.
- The latest financial statement and notes of the accounts.
- Information of the future development of the business and its future prospects.
- Other matters that may have a material impact on the value of the stock.

6.4.2 It is possible in addition to apply to the Ministry of Finance for an exemption from the prospectus requirements, setting out the circumstances.

6.4.3 The prospectus has to be approved annually.

²⁸ Financial Supervision Authority
11 February 2002 Interpretation of the provision on securities offerings in the Securities Market Act
(K/41/2002/PMO)

- 6.4.4 There are there no restrictions on employees holding foreign shares (or options over foreign shares).

6.5 Securities law

- 6.5.1 There are no securities law restrictions on the number of individuals who can participate in the plan. However, according to the guidelines of the Financial Supervision Agency, there is a requirement to file a prospectus if the offer of securities is deemed to be made to the “public”.
- 6.5.2 Stock option plans have to be registered in the public company register. If an offer is made to the public, a prospectus has to be approved by the Financial Supervision Agency²⁹. The prospectus has to be approved and published prior to making a public offer of securities.
- 6.5.3 The failure to file for a prospectus may lead to fines according to Securities Market Act 8:3 §.

6.6 Financial assistance

- 6.6.1 There are no restrictions regarding the provision of financial assistance to employees³⁰. If the interest rate for such assistance (in the form of a loan) is less than the reference interest rate, the difference between these interest rates is deemed to be taxable benefit for the employee, and as such, subject to both the employer’s and the employee’s social tax.

6.7 Other

- 6.7.1 There are there no foreign exchange requirements to file/register the plan³¹.
- 6.7.2 Employees have no rights prior to exercise, e.g. voting, dividends etc. apart from the right to subscribe for shares.
- 6.7.3 *Transfer of shares*
- 6.7.4 A company normally issues (emits) new shares after shareholder’s annual general meeting has granted the board of directors the power to issue new shares within the framework of share option plan. After the new shares have been registered with the public company register, they are legally existent, and can be transferred to the book-entry accounts of the subscribers. In practice most companies with stock option plans have their share in the book-entry system in Finland. In case of shares outside the book-entry system, the transfer has to be registered with the company whose shares have been transferred³².

²⁹ Company Act 4:12c §

³⁰ Company Act 4:12c §

³¹ Transfer Tax Act 15 §

³² Act on Book-entry System (826/1991)

6.7.5 *Obtaining shares on option exercise*

6.7.6 After subscribing for shares, and paying the subscription price as defined in the terms and conditions of a share option plan, the shares are transferred to the employee's book-entry account. If an employee does not have a book-entry account, such account should be established with a bank or a banker. Publicly traded shares have, by law, to be recorded in the book-entry securities accounts. Account operators (banks, brokerage firms and Finnish Central Securities Depository) make entries in the book-entry accounts, and no other registration is necessary.

6.7.7 The Finnish jurisdiction does not recognise the concept of a "trust".

6.7.8 There are no regulatory / official bodies that require notification or consultation unless there is the requirement to file a prospectus.

6.7.9 Tax revenues from stock option plans are not used for any specific purpose.

7. Sourcing shares for stock option plans

7.1 Finnish companies may issue new shares or transfer treasury shares on exercise of stock options.

7.2 Companies can buy their own shares, publicly listed companies can own up to a maximum of 5% of their share capital (this limitation does not apply to unlisted companies). Shares can be acquired only by using distributable funds. It is not possible for a subsidiary to hold shares in its parent company³³.

7.3 Depending on the terms and conditions of a stock option plan, options may be freely transferable³⁴. A number of companies have avoided the need of financial assistance by defining the stock option terms and conditions in a way that they are fully transferable to a third party. In practice, a number of companies have listed their transferable stock options on the Helsinki Exchange. Currently, stock options of twenty seven different companies are listed on Helsinki Exchange.

8. Role and influence of existing shareholders

8.1 The influence of shareholders on corporate governance is a newly emerging area in Finland. Traditionally their role has been limited to approvals.

³³ Company Act, Chapter 7

³⁴ Income Tax Act 66 §

- 8.2 Shareholder approval (in the shareholder's annual general meeting) is required. The annual general meeting will approve the terms and conditions of the stock option plan, although they can authorise the board of directors to implement the details of a stock option plan, within the scope accepted by the shareholders³⁵.

9. Accounting

- 9.1 Stock option plans usually do not have an impact on the Profit & Loss account. However, the company has the right to deduct the actual costs of a stock option plan (e.g. employer's social security contributions), and has to make a mandatory provision for the social security contributions. However, this provision is not deductible for corporation tax purposes. Stock option plans have an impact on the balance sheet if the company issues new shares as stock options are being exercised; the newly issued shares increase the share capital.
- 9.2 Where shares are purchased there is no direct impact on either the Profit & Loss account or the Balance Sheet. The company has to declare all shares it has bought in notes to the accounts, and the acquisition price has to be reported as non-distributable funds.
- 9.3 A pending stock option plan is disclosed in the notes to the accounts of the company. The notes to the accounts have to include information on the dilution effect of the stock option plan, as well as description of the terms and conditions of the stock option plan. In addition, the development of the stock option plan has to be monitored in the annual report.
- 9.4 In our view, the accounting treatment is generally viewed favourably by companies. However, recently there has been public discussion on the accounting treatment, and the current accounting treatment has been criticised by the investors for not giving a complete picture of the total impact of stock option costs. So far there is no indication that this would lead to legislative changes.

10. Miscellaneous

- 10.1 There are no miscellaneous aspects in Finland.

11. Special points of note

11.1 Mitigation of income tax

- 11.1.1 It is, in theory, possible to distribute stock option income over a number of years, and to tax it accordingly. The requirements for distribution are:
- Minimum income to be distributed €2,500.

³⁵ Company Act 9:5 §

- Income accrued over 2 or more years.
 - Income represents at least a quarter of taxable earned income of the option-holder.
 - An application for distribution must be made.
- 11.1.2 In practice most tax offices do not regard stock option income as being “accrued” over a number of years and therefore do not accept that the stock option is distributed. The question of distribution in relation to stock option benefits is not a hot issue as most option-holders are higher rate taxpayers in any event and so would not benefit from distribution.
- 11.1.3 The Income Tax Act was amended in 1997, and transfers to close relatives (e.g. spouse, children) are treated as if the transferor him/herself exercises stock options when the transferee exercises them. Prior to this change of tax laws, this method was largely used to reduce the level of income tax³⁶.
- 11.1.4 Mitigation of income tax on the exercise of an option may also be possible, if the overall tax burden of the employee (income taxes, i.e. state income tax, municipal tax and church tax (if elected); health insurance contributions; capital gains tax; and wealth tax) rises up to 70% of his/her taxable earned income and capital gains in state taxation. This ceiling of taxation is rarely applicable. In practice, the overall tax burden can rise to this limit only in case of substantial wealth taxes. If the 70% ceiling is exceeded, the state income tax is reduced to such extent as required to meet the overall tax ceiling³⁷.
- 11.2 Mitigation of social security contributions**
- 11.2.1 It is not possible to mitigate any liability to social security contributions.
- 11.3 Mitigation of tax on sale of shares**
- 11.3.1 It is not possible to mitigate tax on the sale of shares.
- 11.4 Special provisions for SMEs**
- 11.4.1 There are no special provisions for SMEs.

³⁶ Income Tax Act 66 §

³⁷ Income Tax Act 136§

Note: Individual country reports have been prepared covering employee stock options in the EU and the USA. These individual reports are of a general nature and subject to change based on individual circumstances. PricewaterhouseCoopers has also provided the EU with an overview report. This overview report sets out the basis on which the individual reports were prepared and should be referred to as necessary. In particular, it should be noted that the information in the reports is current as at 1 January 2002, unless otherwise stated. In the case of certain known subsequent changes, reference may be made on occasion but a full update exercise has not been carried out. Further information can be obtained from PricewaterhouseCoopers.