Transfer or bequeathing of business property

Sole proprietors wishing to terminate their business must either transfer the property used in business or take it into personal use. In the case of termination of engagement in business, a sole proprietor may also transfer or bequeath the property to a person who will continue the business activities of the sole proprietor, which is exempt from tax (**subsection 37 (7) of Income Tax Act**). In order to apply tax exemption, the sole proprietor's business assets must be transferred to a person entered in **the commercial register** (hereinafter the transferee), i.e. to another sole proprietor or company, prior to the termination of the sole proprietor's activities.

The following business assets are to be transferred:

- things,
- rights relating to the property,
- obligations relating to the property (tax liabilities cannot be transferred).

Also money in a special account and expenses carried forward from previous periods of taxation belong among the transferable assets. Upon later transfer of the property received by the transferee, the selling price of the property is deemed to be the taxpayer's (transferee's) business income.

Example 1
The sole proprietor Malle decides to transfer her business to her son Kalle, who wishes to continue his mother's business. In order that Malle could transfer her property used in business to her son exempt from taxes, Kalle must register his activity in the commercial register either as a sole proprietor or a company prior to the transfer. Malle has to terminate her business in the commercial register after the transfer of the property.

As the composition of the assets of the sole proprietor changes upon a transfer, it is necessary to draw up a contract and a list of transferred assets. The Income Tax Act does not provide in what conditions, how and in what form the contract and the list shall be compiled. However, it is recommended to compile the required documents according to the conditions provided for in **the Law of Obligations Act,** definitely in a format which can be reproduced and the circumstances concerning taxation be established.

If a business is transferred to another sole proprietor, the transferee must also be registered as an undertaking in the commercial register. There are two possibilities:

- the transferee will register himself/herself in **the commercial register** as a sole proprietor by own

- name, after which a unique registry code is issued to him/her.

- the transferee will continue the business activities under the present business name of the sole proprietor, provided that the undertaking is obtained by transfer (including transfer free of charge) and the transferor has given his/her written consent.

In addition to accounting for taxation purposes, sole proprietors are required to keep their accounts. A sole proprietor as an accounting entity is required to document all his/her business transactions. Thus, if a sole proprietor transfers the property of his/her undertaking to another person, this operation should be documented. Whereas the transferee must be a person to whom the requirements arising from the Accounting Act extend, the transferee is also obliged to take inventory of the assets received in his/her accounting.

Example 2
Malle, who transferred her business to her son, decides to keep the computer used in business for herself. Malle had entered 80 per cent of the acquisition cost of the computer into the expenses related to business during the purchasing year. Malle purchased the computer for 7 000 kroons in 2009, wherefrom 5 600 kroons was entered in the expenses related to business for the year 2009. Now, the market price of the computer is 255.65 euros. Malle declares 294.52 euros (255.65 x 80%) in line 1.1.5 on Form E of the tax return for the year of putting the computer into own personal use.
This asset (the computer) was not transferred and the transferee does not enter the asset in the accounts.

The transfer of assets must be declared in Annex to Form E, which is submitted to the Tax and Customs Board together with Form A and Form E by 30 April of the year following the period of taxation.