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# Fortum's Annual Report 2014

*Fortum is an energy company highly committed to sustainability. We strive to respond to the needs of our customers by generating, selling and distributing low-carbon electricity and heat and by offering energy-sector expert services.*

## 39 Legal actions and official proceedings

### 39.1 Group companies

The Swedish Energy Authority (EI), which regulates and supervises the distribution network tariffs in Sweden, has issued a decision concerning the allowed income frame for the years 2012-2015. EI has based its decision on a model with a transition rule stating that it takes 18 years to reach the allowed level of income. The EI decision has been appealed to the County Administrative Court by more than 80 distribution companies, including Fortum Distribution AB. The basis for Fortum Distribution AB's appeal is that the model is not compatible with the existing legislation and that EI has applied an incorrect method for the calculation of Weighted Average Cost of Capital (WACC). In December 2013, the court decided in favor of the industry on all major topics. However, the decision has been appealed by EI to the next level, the Administrative Court of Appeal. In November 2014, the Administrative Court of Appeal, the second law-court, ruled in favour of the Swedish network companies. In December 2014, however, EI decided to appeal this decision to the next and final law-court, the Supreme Administrative Court. For the case to be reconsidered, it is required that the Supreme Administrative Court grants a leave to appeal. A decision whether to grant such a leave will be made during the spring 2015.

Fortum received income tax assessments in Sweden for the years 2009, 2010, 2011 and 2012 in December 2011, December 2012, December 2013 and October 2014, respectively. According to the tax authorities, Fortum would have to pay additional income taxes for the years 2009, 2010, 2011 and 2012 for the reallocation of loans between the Swedish subsidiaries in 2004-2005, as well as additional income taxes for the years 2010, 2011 and 2012 for financing of the acquisition of TGC 10 (current OAO Fortum) in 2008. The claims are based on a change in tax regulation as of 2009. Fortum considers the claims unjustifiable and has appealed the decisions. The cases are pending before the Administrative Court. In January 2015 the Swedish tax authority announced to the Administrative Court that it has abandoned its claim regarding the year 2010 with respect to financing the acquisition of TGC 10.

Based on legal analysis and supporting legal opinions, no provision has been recognised in the financial statements. If the decisions by the tax authority remain final despite the appeals processes, the impact on net profit would be approximately SEK 425 million (EUR 45 million) for the year 2009, approximately SEK 379 million (EUR 40 million) for the year 2010, approximately SEK 511 million (EUR 54 million) for the year 2011 and approximately SEK 173 million (EUR 18 million) for the year 2012.

Fortum has received income tax assessments in Belgium for the years 2008, 2009, 2010 and 2011. Tax authorities disagree with the tax treatment of Fortum EIF NV. Fortum finds the tax authorities' interpretation not to be based on the local regulation and has appealed the decisions. The court of First instance in Antwerpen rejected Fortum's appeal for the years 2008 and 2009 in June 2014. Fortum finds the decision unjustifiable and has appealed to the Court of Appeal. Based on legal analysis and a supporting legal opinion, no provision has been accounted for in the financial statements. If the decision of the tax authorities remain final despite the appeal process, the impact on the net profit would be approximately EUR 36 million for the year 2008, approximately EUR 27 million for the year 2009, approximately EUR 15 million for the year 2010 and approximately EUR 21 million for the year 2011. The tax has already been paid. If the appeal is approved, Fortum will receive a 7% interest on the amount.

Fortum received an income tax assessment in Finland for 2007 in December 2013. Tax authorities claim in the transfer pricing audit, that detailed business decisions are done by Fortum Oyj and therefore re-characterize the equity Fortum has injected to its Belgium subsidiary Fortum Project Finance NV not to be equity, but funds to be available for the subsidiary. Tax authorities' view is that the interest income that Fortum Project Finance NV received from its loans should be taxed in Finland, not Belgium. Fortum considered the claims unjustifiable both for legal grounds and interpretation. Fortum appealed the decision.

The Board of Adjustment of the Large Taxpayers' Office approved Fortum's appeal for the year 2007 on 21 August 2014. The Board of Adjustment's decision is in line with the principle adopted in the Supreme Administrative Court's precedent in June 2014, according to which, under transfer pricing rules, the nature of business cannot be re-characterized for tax purposes, but can only adjust the pricing of goods or services. Despite the new precedent, the Tax Recipients' Legal Services Unit within the tax authorities has appealed this decision to the Administrative Court in Helsinki. If the appeal of the Tax Recipients' Legal Services Unit would be successful in court, the impact on net profit would be approximately EUR 136 million for the year 2007. Based on legal analysis and a supporting legal opinion, no provision has been accounted for in the financial statements.

In December 2014 Fortum Oyj received a non-taxation decision from the large Taxpayers' office for the years 2008-2011 regarding the activities in the Belgian and Dutch financing companies. The decision was given due to the transfer pricing audit carried out in 2013-2014 and was in line with the Board of Adjustment's decision with respect to Fortum for the year 2007. The Tax Recipients' Legal Services Unit has the right to appeal the decisions.

[See Note 14 Income tax expense and 29 Deffered income taxes](#)

In addition to the litigations described above, some Group companies are involved in other routine tax and other disputes incidental to their normal conduct of business. Based on the information currently available, management does not consider the liabilities arising out of such litigations likely to be material to the Group's financial position.

## 39.2 Associated companies

In Finland Fortum is participating in the country's fifth nuclear power plant unit, Olkiluoto 3 (OL3), through the shareholding in Teollisuuden Voima Oyj (TVO) with an approximately 25% share representing some 400 MW in capacity. The civil construction works of the Olkiluoto 3 plant unit have been mainly completed, and the reactor main components are installed. Reactor containment pressure and leak-tightness tests have been completed. Instrumentation and control system tests in the test bay in Erlangen, Germany continued alongside planning and licensing. In September 2014 TVO received additional data about the schedule for the OL3 project from the Supplier, AREVA-Siemens. According to this data, the start of regular electricity production of the plant unit will take place in late 2018. Detailed evaluation of the received data is ongoing.

In December 2008 the OL3 Supplier initiated the International Chamber of Commerce (ICC) arbitration proceedings and submitted a claim concerning the delay and the ensuing costs incurred at the Olkiluoto 3 project. The updated quantification which the Supplier submitted in October 2014 and corrected in November 2014 brings the total amount claimed by the Supplier for events occurring during the construction period ending June 2011 to approximately EUR 3.4 billion.

In 2012, TVO submitted a counter-claim and defense in the matter. The quantification estimate of TVO's costs and losses updated in October 2014 is approximately EUR 2.3 billion until the end of 2018, which according to the schedule submitted by the OL3 Supplier in September 2014, is the estimated start of the regular electricity production of OL3.

The companies belonging to the Plant Supplier Consortium (AREVA GmbH, AREVA NP SAS and Siemens) are jointly and severally liable of the Plant Contract obligations.

The arbitration proceedings may continue for several years and the claimed amounts may change.