



Statement

29.5.2026

VN/6045/2025

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Specific instance of compliance with OECD Guidelines; Final statement of the Finnish National Contact Point

Parties

Complainant

Finnwatch ry

Company involved

KPMG Oy Ab

Account of the case

Specific instances of compliance with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, hereinafter *OECD Guidelines* or *Guidelines*, are addressed in Finland by the Ministry of Economic Affairs and Employment, which is the Finnish National Contact Point for Responsible Business Conduct (NCP), together with its Committee on Corporate Social Responsibility (Government Decree 591/2008 on the Committee on Corporate Social Responsibility, section 1, subsection 2, paragraph 3).

The Committee on Corporate Social Responsibility has issued its opinion in the matter (appendix).

The Ministry of Economic Affairs and Employment, together with the Committee on Corporate Social Responsibility, states the following as the NCP:

Substance of the complaint

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The NCP received the complaint, i.e. specific instance, filed by the association Finnwatch ry, hereinafter *Finnwatch* or *complainant*, on 19 February 2025. The complaint alleges that KPMG Oy Ab, hereinafter *KPMG*, *enterprise* or *company*, has violated the OECD Guidelines, specifically Chapter XI, 1) 'In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature.'

The complaint alleges that KPMG has actively marketed to small business owners corporate arrangements that are contrary to the spirit of the law and shall be deemed to constitute aggressive tax planning, the aim of which is to significantly reduce the taxation of dividends. The marketing and arrangements have been pursued since 2022 at least.

The source of the tax benefit lies in that the shares of the operating company whose shares are being swapped can be measured at their 'fair value' in the swap, and this fair value may be set higher than the operating company's net assets. Since the opportunity to take out dividends from non-listed companies at a reduced tax rate is in Finland tied to the net assets of the company paying the dividends, the higher net assets of the holding company allow higher dividends to be taken out at the reduced tax rate.

The complaint further states that these arrangements were made possible in Finland by a ruling of the Supreme Administrative Court. However, it does not follow from the ruling of the Supreme Administrative Court that the arrangements and their outcomes would comply with the spirit of the law. The legislature did not intend to allow the use of share swaps to reduce dividend taxation. Experts have broadly held the said arrangements to be contrary to the spirit of the law. The arrangements must be considered to be contrary to the spirit of the law and the provision of assistance in such arrangements to be in violation of the OECD Guidelines.

Substance of the company's response

KPMG Oy Ab holds that the specific instance filed by Finnwatch lacks foundation.

KPMG Oy Ab has the right and the obligation to inform its clients of the substance of legislation and the prevailing legal situation. Under the company's Responsible Tax principles, when advising clients, KPMG is also obliged to inform them of all options permitted by law that are suited to the clients' individual circumstances.

The law and its spirit must be interpreted in light of binding sources of law in Finland. The OECD Guidelines do not constitute such a binding official source, and to demand that tax advisory services comply with them would be contrary to the hierarchy of norms derivable from the Constitution.

Under section 81 of the Constitution of Finland, taxation shall be governed by an act, and the legality principle also entails the requirement that the regulation be precisely defined and delimited. The grounds for taxation shall be provided for in the text of the tax law.

The legal protection of taxpayers requires the grounds for deciding matters relating to their taxation to be provided for by an act, the interpretation of which is guided by the administrative courts and in the final instance, by the Supreme Administrative Court and its case law. Applying any other rules as a binding source of law is in violation of the Constitution and our legal system. The spirit of tax law can only be derived from provisions at the level of law and binding sources of law recognised by our legal system.

It is ultimately up to the courts to assess the intent of the legislature and the spirit of the law. Obtaining an advance ruling from the Finnish Tax Administration prior to implementation is sufficient to ensure that any envisioned transactions and arrangements are acceptable in terms of taxation.

Examination of specific instance

The NCP accepted the complaint filed by Finnwatch for further examination on grounds including that in the view of the NCP, KPMG Oy Ab is a multinational enterprise within the meaning of the Guidelines, and examination of the complaint would contribute to the purpose and effectiveness of the OECD Guidelines.

Serving as a non-judicial grievance mechanism, the purpose of the NCPs is to aim to facilitate dialogue between the parties and support them in seeking mutually agreeable and Guidelines-compatible solutions to the issues raised.

In the case in hand, neither party considered the mediation offered by the NCP to be an appropriate way of resolving the issues that had arisen. In these situations, the Finnish NCP, on the basis of the evidence and information obtained, strives to form an opinion as to whether violation of the Guidelines is at hand. Lacking the enforcement tools of the courts to examine the matter, the NCP's assessment is based on the facts put forward by the parties.

The NCP has examined more closely the requests made, their grounds and the other evidence put forward in the case as well as the responses given in the case and the other evidence accompanying these.

Decision of the NCP

Reasoning

It is obvious in this case that KPMG Oy Ab has advised/assisted its clients in tax approaches that seek to provide the clients with the most advantageous tax treatment allowed under relevant law. The parties disagree as to whether the substance of the advice/solutions provided in the services guided clients to act in ways contrary to the spirit of the law and therefore contrary to the OECD Guidelines.

The OECD Guidelines may call for policies that go beyond the requirements of legislation (OECD Guidelines, Chapter 1, paragraph 2). Assessing whether the company acted in compliance with the spirit of the law requires forming an understanding of the substance of the conduct that would comply with such spirit going beyond the requirements of legislation.

In the opinion of the NCP, compliance with the spirit of the law should be assessed on the basis of the intention of the legislature, as expressed in the preparatory materials of the legislation in force at the time of the events giving rise to the complaint, in particular the relevant government proposal and parliamentary reply. The tax legislation provisions governing the matter make it possible to measure the assets of a company at a higher value than they actually have, which in turn allows the minimisation of dividend taxation.

This particular interpretation of tax legislation came about on the basis of a ruling of the Supreme Administrative Court in case KHO 2017:78. The interpretation enables the conduct described in the specific instance to be undertaken lawfully based on the relevant provisions of law. Moreover, in individual cases, the Finnish Tax Administration's advance ruling procedure allows applicants to obtain, for a fee, an advance ruling on how the tax authority will treat the said individual case in terms of taxation.

As the NCP understands it, the material related to the case, leads to a need to determine whether the legal situation derivable from the interpretative joint effect of different provisions and the decision of the Supreme Administrative Court can be contrary to the spirit of the applicable laws in force at the time of the events giving rise to the complaint.

The NCP finds that, based on the evidence and information put forward in the case, the said legal question remains unanswered. The views put forward, about the policies of the company being contrary to the spirit of the law, are based on assessments which

are ex post facto and general in nature and which also were not available at the time of the commencement of the events of the specific instance.

Resolving unanswered legal questions is not within the competence of the NCP. In Finland, jurisdiction is exercised by the courts, which have access to specific powers in order to determine the facts of the cases before them. Determining the substance of the spirit of the provisions of applicable tax legislation would be a very particular legal question and its resolution can only fall within the competence of a court of law.

The examination of the specific instance must further involve an assessment of the significance of the fact that the case does not involve matters relating to the company's own taxation but to the tax advisory services it provides.

The NCP finds that also when providing tax planning services, a company must, as a rule, be allowed to make its clients aware of the different options permitted under law as well as the limiting factors of applicable legislation and particular interpretational issues relating to it.

The NCP finds that based on the evidence put forward in the case, the company must be deemed to have taken the steps to determine the intention of the legislature that are reasonable with regard to compliance with Chapter XI of the OECD Guidelines, by acting in compliance with the case law involving legislation related to the matter and directing clients to avail themselves of the Finnish Tax Administration's official administrative procedure that ensures the taxation-related interpretation of individual cases.

The NCP holds that the company would be placed in a situation where it faces conflicting requirements as referred to in Chapter I, paragraph 2 of the OECD Guidelines if it was required, after the fact, to implement policies other than those found to be lawful in the case law of the Supreme Administrative Court or the official administrative process of the Finnish Tax Administration.

Upon interpretation of the evidence and information put forward in the case as well as Chapter I, paragraphs 1 and 2 and Chapter XI, paragraph 1 of the OECD Guidelines, the NCP has not observed a violation of the OECD Guidelines.

The NCP may issue recommendations on the implementation of the OECD Guidelines.

With regard to the general application of the OECD Guidelines, the NCP considers it warranted that information on the Guidelines and their requirements be provided in suitable situations as a part of the advisory services. This is essential particularly in situations where the requirements of the Guidelines and of legislation may differ. The NCP further considers it important that tax advisory service provider companies within the scope of application of the OECD Guidelines take account of the Guidelines as a part of the suites of services they provide.

This might be accomplished, for example, by bringing up, when necessary, the situations where conduct in compliance with the Guidelines requires measures that go further than legislation and also, when necessary, the fact that the approaches identified may involve the possibility of tension vis-à-vis the provisions of the OECD Guidelines.

Outcome

Based on the evidence put forward in the case, the Company cannot be deemed to have violated the OECD Guidelines.

Senior Ministerial Adviser

Sami Teräväinen

APPENDIX Opinion of the Committee on Corporate Social Responsibility