



Decision

30.5.2025

VN/6045/2025
VN/6045/2025-TEM-5

Specific instance of compliance with OECD Guidelines; Initial assessment

Parties

Complainant

Association Finnwatch ry (hereinafter also '*Finnwatch*' or '*Complainant*')

Company involved

KPMG Oy Ab (hereinafter also '*KPMG*' or '*Company*')

Substance of the specific instance

Finnwatch alleges that KPMG has breached the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2011), hereinafter *OECD Guidelines* or *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.*' An equivalent passage appears also in the 2023 update of the OECD Guidelines but the events now at issue started before the most recent update to the Guidelines entered into force.

The complaint alleges that KPMG has actively marketed to small business operators 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 arrangements have been implemented in the form of a share swap. The marketing and arrangements have been pursued for several years and at least since 2022. The arrangements implemented with the assistance of KPMG have caused Finland to forfeit

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tax income and the small business operators that have gone along with the arrangements have suffered harm to their reputation.

According to the complaint, 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. There is no single accepted way of determining fair value, which may instead be determined by a number of methods. In arrangements designed to deliver tax benefits, the fair value has, without exception, been determined to be clearly higher than the net assets of the target company. This allows the net assets of the holding company as well to become considerably higher than the net assets of the operating company, as the shares acquired are included in the holding 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.

According to the Complainant, tax-driven share swap arrangements have not been allowed at the level of legislation directly and instead were made possible in Finland by a ruling of the Supreme Administrative Court. Experts consider the said arrangements to be contrary to the spirit of the law.

Finnwatch emphasises that the specific instance does not argue that the share swap arrangements designed by KPMG would be unlawful. The central issue in the specific instance is whether the arrangements marketed to business operators and implemented with the assistance of KPMG fail to comply with the *spirit of the law* (see OECD Guidelines, Chapter XI, paragraph 1).

With this specific instance submission, Finnwatch wishes to ensure that KPMG introduces processes by which it will, going forward, ensure compliance with the OECD Guidelines in the tax advisory services it provides. KPMG shall introduce in its tax advisory services effective processes by which it ensures future compliance with the OECD Guidelines. These processes shall be publicly disclosed. Additionally, Finnwatch wishes to raise awareness of the OECD Guidelines among other tax consultancy companies.

Finnwatch has contacted KPMG directly but the company has continued to market its aggressive tax planning to small business operators.

Substance of the response

According to KPMG, the OECD Guidelines concern multinational enterprises and the way in which such enterprises organise their operations. The interpretation put forward by the Complainant, that the Guidelines' scope of application could be extended to cover the purely national tax advisory services provided by a multinational enterprise to its external clients is mistaken. The specific instance makes reference to arrangements concerning a Finnish company owned by a Finnish private individual which in terms of substantive content are not covered by the OECD Guidelines.

The National Contact Point (NCP) should refuse to take the specific instance under examination.

KPMG is committed to the principles of responsible tax practice and is subject to the Global Principles for Responsible Tax Practice it shares with KPMG International.

The arrangement commonly referred to as a share swap is one of the corporate restructuring methods defined in the EU Mergers Directive and Finland's tax laws. In terms of company law, share swaps are implemented as a share issue against contribution in kind. When assessing the tax treatment of share swaps, account shall additionally be taken of the

specific tax evasion provision for corporate restructuring and the general income tax evasion provision, the application of which involves in particular assessment of whether the outcome of the arrangement is alien to the Finnish tax system and whether there is a sufficient business rationale for it.

The annual number of restructurings involving a share issue against a contribution in kind of shares that has been implemented by KPMG Oy Ab is low and has remained virtually unchanged for the past five years.

KPMG Oy Ab markets its services broadly with no specific focus on share swaps. However, the company has no influence over the comments made by its clients or third parties regarding its services. Nonetheless, in advising clients KPMG Oy Ab is obligated to make them aware, even under pain of liability to compensate, of all of the options allowed under law that suit each client's individual circumstances.

With regard to the Supreme Administrative Court decision KHO 2017:78 mentioned in the complaint, KPMG Oy Ab points out that the Court found the share swap arrangement not to involve tax benefits that are alien to the system.

Taxpayers may apply to the Tax Administration for an advance ruling on the tax treatment of an envisioned measure. This procedure allows the taxpayer to ensure that the envisioned measure has the advance approval of the Tax Administration and is also consistent with the intent of the legislator.

In cases of share swaps, KPMG Oy Ab advises its clients to obtain an advance ruling from the Tax Administration with an application that lays out the business rationale for the arrangement as specified by the client. In this way, KPMG Oy Ab engages in dialogue with the Tax Administration for its part in relation to the restructuring implemented by its clients, ensuring that these comply both with KPMG's internal Responsible Tax principles and the internationally recognised OECD principles. KPMG neither markets nor recommends to its clients the implementation of transactions or arrangements that lack a sufficient business rationale.

KPMG has the right and the obligation to inform its clients of the substance of legislation and the prevailing legal situation. It is ultimately up to the courts to assess the intent of the legislator and the spirit of the law. Obtaining an advance ruling from the Tax Administration prior to implementation is sufficient to ensure that any envisioned transactions and arrangements are acceptable in terms of taxation. KPMG has in place appropriate processes for taking responsibility aspects into account in tax services and the marketing of these services.

Complainant's supplementary statement in consequence of response

A precise definition of multinational enterprises is not required for the purposes of the Guidelines and the Guidelines are addressed to all the entities within the multinational enterprise. The Guidelines also directly state that the Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. In other words, the country or countries in which business is pursued is irrelevant to the application of the OECD Guidelines. The Guidelines also apply to activities taking place within a given country. KPMG Oy Ab is a member firm in a global network active in 142 countries the world over. The network has a uniform brand and uniform policies. The KPMG Oy Ab group, active in Finland and Estonia, is itself a multinational enterprise. KPMG Oy Ab is therefore a multinational enterprise within the meaning of the OECD Guidelines.

The OECD Guidelines apply to service industry companies, too. The advisory services provided to clients are a key element of KPMG Oy Ab's business. The marketing in which KPMG Oy Ab engages is also a part of the business it pursues. Chapter XI concerning taxation has not been limited to apply to only the payment of taxes levied on a company itself. The advisory services provided to clients by KPMG Oy Ab as part of its business and the marketing directed to clients are also covered by the OECD Guidelines.

The issue in the specific instance is the tax advisory services of KPMG Oy Ab and the related marketing.

Evidence

Evidence submitted by the Complainant

Evidence that KPMG Oy Ab has marketed to and implemented for its clients arrangements that are contrary to the spirit of the law:

- Newspaper HS, 17 February 2025, Messages reveal: *Natalia Salmela markkinoi "massimuijille" aggressiivista verosuunnittelua* [Natalia Salmela markets aggressive tax planning to 'money mamas'], <https://www.hs.fi/tutkiva/art-2000010960240.html>
- The page of the KPMG website focusing on ownership strategy states that the company's experts in taxation and law have 'in their toolkit an enormous number of different options falling within the decision-making powers of owners that, with careful planning and controlled implementation, may also be referred to as restructuring'. An example given reads, 'arrangements aimed at growing net assets and enhancing profit distribution'.
- KPMG has implemented a share swap for four social media influencers investigated by Finnwatch.
- After the share swaps became a topic of widespread public debate, KPMG has focused on defending the arrangements: https://kpmg.com/fi/fi/home/Pinnalla/2023/10/yritys_toimintaa-kannattaa-harjoittaa-konsernirakenteess a.html
- Decisions in the Government's mid-term policy review 2025 stating that, 'The inappropriate use of share swap arrangements aimed at minimising dividend taxation will be prevented.' ([link](#))
- The [presentation](#) of Minister of Finance Purra (slide 6) states, with regard to share swap arrangements, that 'The minimisation of dividend taxation by means of artificial share swap arrangements will be prevented (EUR 30 million).' In her comments, Minister Purra referred to the said section of legislation as the 'social media influencer/money mama clause'.

Views put forward in the media by experts stating that the tax-driven share swap arrangements implemented by KPMG are contrary to the spirit of the law:

- Heikki Niskakangas, Professor Emeritus of Business Law at Aalto University, has stated that the arrangements in question are contrary to the spirit of the law (newspaper HS, 6 September 2023).

- Anita Isomaa, Tax Director at the Confederation of Finnish Industries EK, has stated that the outcome of the arrangement is not consistent with the intent of the legislator and proposed that “the casting flaw arising from case law” be remedied. Tomi Viitala, Senior Tax Adviser of the Finland Chamber of Commerce has also argued that a prompt precision remedy is required in order to prevent the dividend tax planning associated with holding companies (Finland Chamber of Commerce press release, 22 September 2023).
- Professor of Tax Law Pekka Nykänen writes in a peer-reviewed study (Edilex, 10 December 2024) that features of aggressive tax planning are associated with share swap arrangements. According to Nykänen, “the tax benefits deriving from share swaps are hard to find to be consistent with the legislator’s objectives in the regulation of share swaps”.
- Tarja Valsi, Director at Finnish Tax Administration, Head of Tax Crime, finds the tax arrangements [implemented by KPMG] to exist in a legal grey area. Valsi considers it unlikely that it would have been the legislator’s intent to create such a loophole. (YLE, 18 February 2025)
- Attorney at law Ossi Haapaniemi has raised the question of the extent to which even the Supreme Administrative Court intended its ruling KHO 2017:78 to spell acceptance of the kinds of arrangement described (that have been implemented by KPMG: According to Haapaniemi, a legislative amendment is “in any case, a more justified response to addressing a possible flaw than tighter taxation practice and application of the tax evasion provision would be”. (Edilex, 8 November 2024)
- The Ministry of Finance has already explored remedies and according to Helsingin Sanomat, officials at the Ministry are prepared to remedy ‘the loophole commercialised by tax consultants’ as soon as political decision-makers give the go-ahead (HS, 17 February 2025). According to Minister of Finance Purra, the topic will be addressed at the mid-term policy review session in the spring (HS 19 February 2025). In other words, it would seem that also among public officials and decision-makers, the tax benefits brought about by the arrangement are considered to be contrary to the intent of the law.
- Assessment memorandum issued in the context of the mid-term policy review at the Ministry of Finance stating the following in respect of the share swap arrangements which are the issue in this specific instance (p. 2): ‘Since the decision of the Supreme Administrative Court (KHO 2017:78) and especially in the past few years, share swap legislation has been applied contrary to the “spirit of the law” for purposes of aggressive tax planning that aims to minimise dividend taxation. The tax policy problem arises from the fact that the combined effect of the system of dividend taxes and the provisions on share swaps delivers a consequence that neither seeks to bring about.’

Procedure to address specific instances alleging breach of the OECD Guidelines

The OECD Guidelines for Multinational Enterprises (Guidelines) are recommendations addressed by governments to multinational enterprises. The recommendations consist of principles and norms of responsibility and the application of legislation in international business. Finland is committed to promoting compliance with the OECD Guidelines. The Guidelines are supported by a mechanism of National Contact Points (NCPs), agencies established by adhering governments. These NCPs promote and apply the Guidelines. The NCPs also serve as a forum for mediation and settlement of disputes regarding the application of the Guidelines.

A party may submit a complaint (i.e. a ‘specific instance’) regarding the Guidelines when it wants to establish whether a multinational enterprise has adhered to the Guidelines. In Finland, these specific instances are addressed by the Ministry of Economic Affairs and Employment, which is the Finnish NCP, together with its Committee on Corporate Social Responsibility (Government Decree 591/2008). At the Ministry’s request, the Committee will provide a statement on whether the company has adhered to the Guidelines.

When a specific instance is submitted to the Ministry of Economic Affairs and Employment, the NCP first assesses whether it will be taken under further examination by conducting an initial assessment.

Decision on initial assessment

Questions to consider

In accordance with paragraph 33 of the Commentaries on the Implementation Procedures of the OECD Guidelines (p. 70) and the national description of the procedure for submitting and processing complaints regarding the OECD Guidelines, the initial assessment will take into account the following:

- is the Finnish NCP the appropriate body to examine the specific instance;
- the identities of the parties involved and their interests in the matter in question;
- whether the issue is material (i.e. relevant to the implementation of the Guidelines) and substantiated (i.e. supported by sufficient and credible information);
- whether the company is covered by the Guidelines;
- whether there seems to be a link between the company’s activities and the issue raised in the specific instance;
- the extent to which applicable law and/or parallel proceedings limit the NCP’s ability to contribute to the resolution of the issue and/or the implementation of the Guidelines, in light of the Guidelines’ Commentaries on Implementation Procedures, paragraph 35 (p. 70); and
- whether the examination of the issue would contribute to the purposes and effectiveness of the Guidelines.

The substance of the complaint is not addressed in the initial assessment.

Assessment of the above considerations

The Complainant in this specific instance is the civil society organisation Finnwatch ry and its aim is for KPMG Oy Ab to introduce processes to ensure its future compliance with the OECD Guidelines in the tax advisory services it provides.

KPMG submitted a response in respect of the specific instance holding that the specific instance should not be taken under examination on the grounds that the national tax advisory services to which reference is made in the specific instance are not covered by the OECD Guidelines.

The NCP finds that the Finnish NCP shall, in general, be considered the appropriate body to examine a specific instance concerning Finnish company KPMG Oy Ab and actions alleged to have taken place in Finland.

The NCP considers the Complainant’s interests to be appropriate. There is a link between the services provided by the company and the issue raised in the specific instance. The Complainant has submitted evidence in support of its complaint and the complaint shall be deemed to be substantiated.

In the opinion of the NCP, a material question in the initial assessment is whether activities relating to national tax advisory services shall be taken to be material with regard to the OECD Guidelines and whether KPMG may be considered to be a multinational enterprise within the meaning of the Guidelines.

The NCP notes that since according to the complaint, the activities started no later than in 2022, the 2011 edition of the Guidelines shall apply to activities predating the entry into force of the new OECD Guidelines adopted on 8 June 2023. Both the 2011 and the 2023 editions of the Guidelines contain a chapter XI concerning taxation and the substance of the chapter is largely the same. The specific instance makes reference to the 2011 edition of the Guidelines.

Part I (Concepts and Principles), paragraph 4 of the 2011 edition of the Guidelines reads as follows:

‘A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed.’

Part I (Concepts and Principles), paragraph 4 of the 2023 Guidelines reads as follows:

‘A precise definition of multinational enterprises is not required for the purposes of the Guidelines. While the Guidelines allow for a broad approach in identifying which entities may be considered multinational enterprises for the purposes of the Guidelines, the international nature of an enterprise’s structure or activities and its commercial form, purpose, or activities are main factors to consider in this regard. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of other entities in a group, their degree of autonomy within the group may vary widely from one multinational enterprise to another. Ownership may be private, State, or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.’

Part I, paragraph 5 of both the 2011 and the 2023 edition of the Guidelines is the same:

‘The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.’

The NCP recognises no reason why activities relating to tax advisory services should not be considered relevant to the implementation of the Guidelines. The issue in the specific instance shall be considered to be material and substantiated.

KPMG Oy Ab is a member firm of KPMG International, a global network providing tax services and advisory services extensively in the public and private sectors. The KPMG

network operates in 142 countries and collectively employs approximately 273,000 professionals. KPMG's operations in Estonia are a part of the KPMG in Finland group.¹

The NCP notes that when assessing whether an organisation is to be considered a multinational enterprise within the meaning of the OECD Guidelines, the Guidelines suggest a broad interpretation of the term². The NCP finds that in this specific instance, KPMG shall be interpreted to be a multinational enterprise within the meaning of the OECD Guidelines. The fact that in the circumstances referred to in the specific instance, the services have only been provided for national needs, cannot rule out the notion that KPMG Oy Ab is to be considered a multinational enterprise.

The NCP notes that the General Government Fiscal Plan for 2026–2029 of Prime Minister Petteri Orpo's Government includes an entry on preventing the minimising of dividend taxation through artificial share swap arrangements³. The Finnish Tax Administration will also, subject to a fee, issue a binding advance ruling on how the Tax Administration will resolve a specific tax matter⁴.

Any consideration of legislative amendments touching upon the situations outlined in the specific instance or any pending or decided requests for advance ruling from the Finnish Tax Administration will not restrict assessment of the conduct of KPMG alleged in the specific instance in terms of the OECD Guidelines.

The NCP finds that examination of this specific instance would support the aims and effectiveness of the OECD Guidelines.

Outcome

The NCP accepts the specific instance for further examination.

Accepting a specific instance for further examination does not mean that the NCP considers a breach of the Guidelines to be at hand, only that the matter warrants further investigation.

Minister of Employment

Matias Marttinen

Senior Officer for Legal Affairs

Sami Teräväinen

¹ About KPMG. <https://kpmg.com/fi/en/about-kpmg.html>

² Considering the purposes of the Guidelines and the notion of 'multinational enterprise' in the context of initial assessments. Guidance note for National Contact Points for Responsible Business Conduct. DAF/INV/NCP(2020)54/REV1, p. 7.

³ General Government Fiscal Plan for 2026–2029; Publications of the Ministry of Finance 2025:18; p. 68.

⁴ Finnish Tax Administration; Application for advance ruling; available at <https://www.vero.fi/en/businesses-and-corporations/cooperation-and-services/Advance-ruling/>

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This document has been signed electronically by the following persons:

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