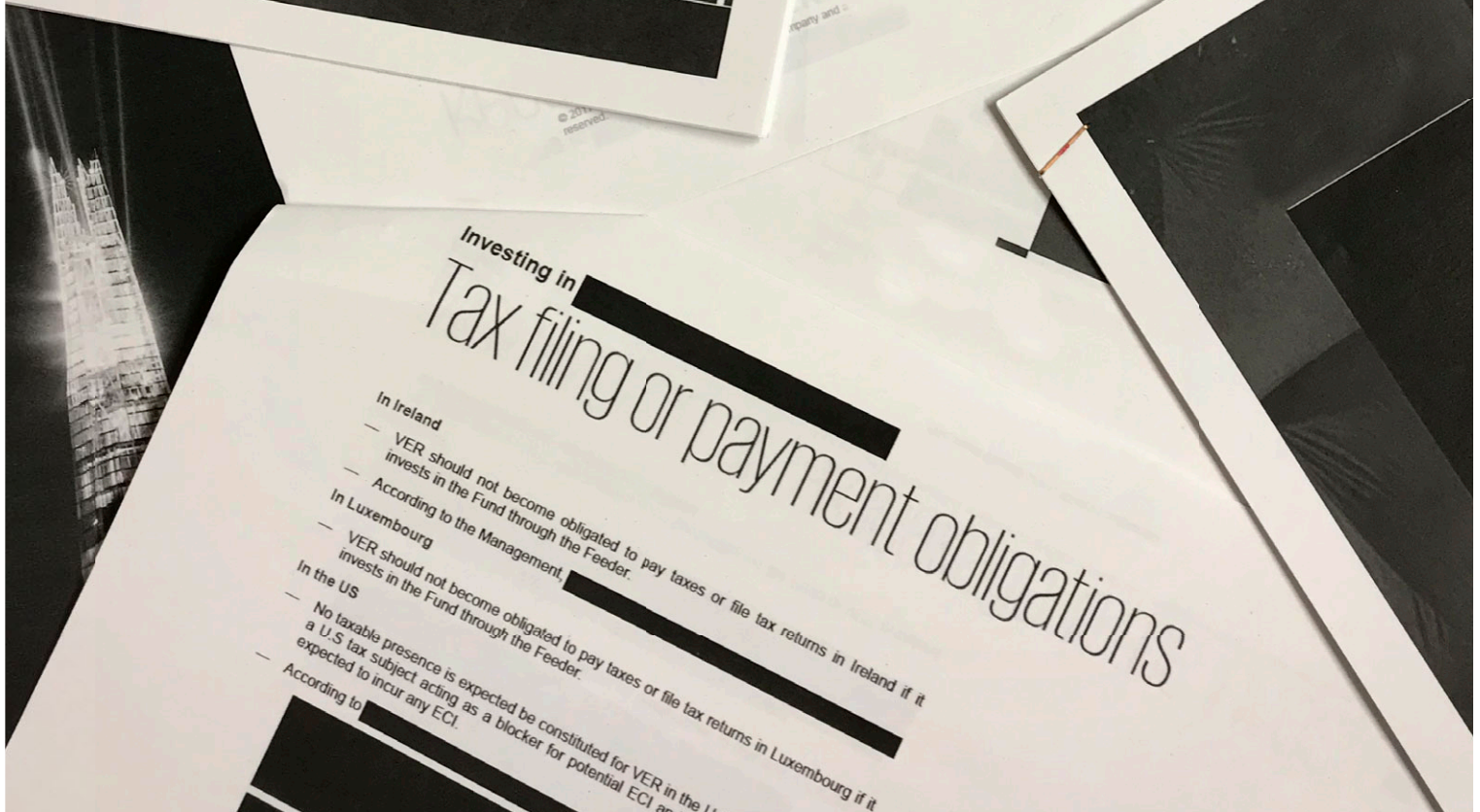
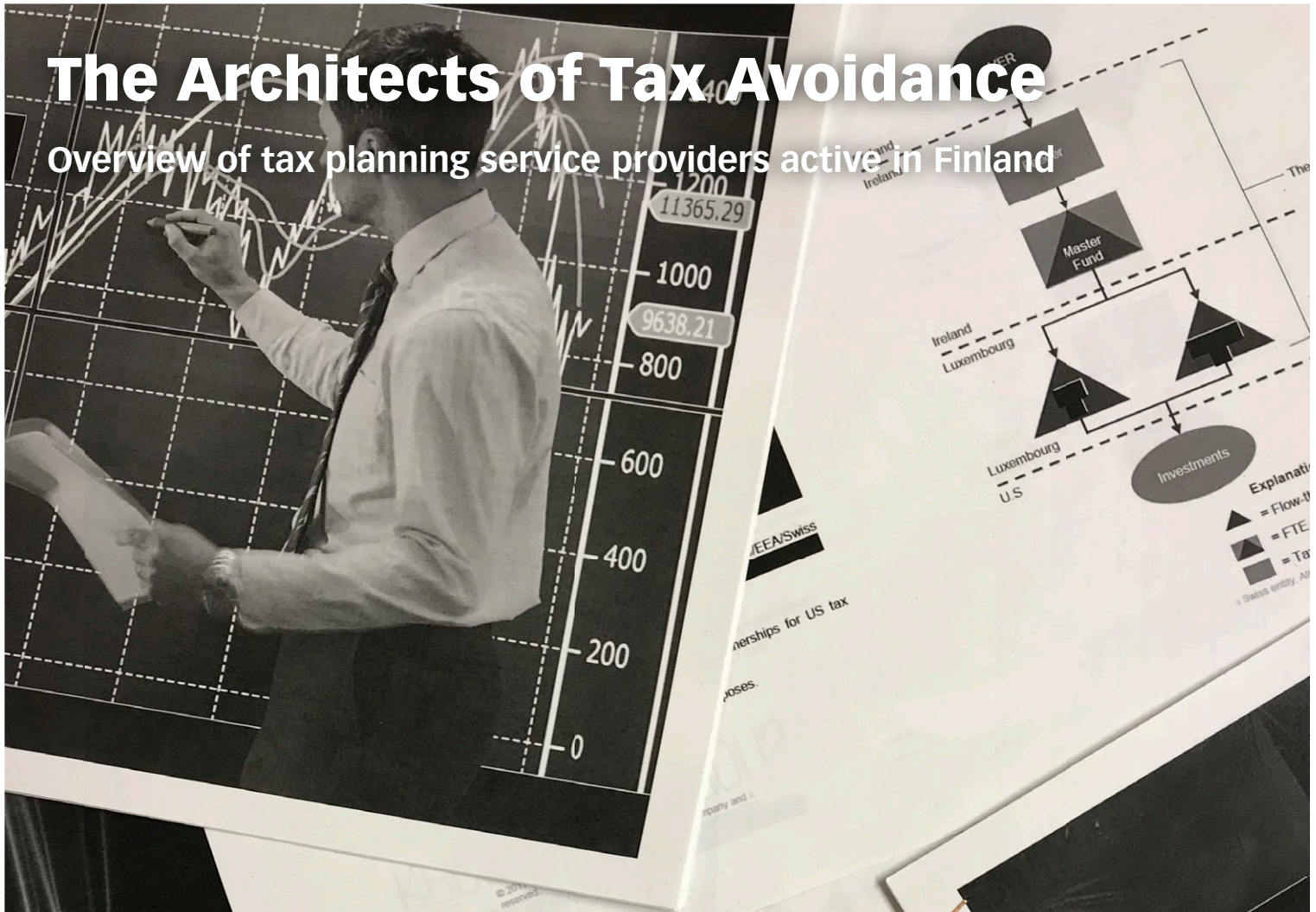


The Architects of Tax Avoidance

Overview of tax planning service providers active in Finland



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Cover photo: Finnwatch. Tax memos ordered by the State Pension Fund of Finland, which include analyses on the investments' tax efficiency.

2nd updated version of the report. Information on Access Partners companies has been updated and moved to Chapter 2.5

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Introduction

International information leakages from companies that provide tax services have provided a significant amount of additional information on the operations of tax havens and the companies and private persons that utilise these.

The largest data leakages, the Panama Papers and Paradise Papers revealed extensive dummy company factories that have been linked to tax evasion and financial crime maintained by law firms and their foreign partners. The Lux Leaks, which preceded these, brought to public attention Luxembourg's secret tax deals that companies utilised with the help of audit and consultancy companies to avoid taxes in the countries where they actually operate¹.

The OECD and EU have started to draw attention to the role of banks, law firms and consultancy companies as well as other companies that provide tax services as intermediaries of tax avoidance. In its report published in June 2017, the PANA Committee, which was established after the Panama Papers leak, states that a tax haven economy would not exist were there not service providers that maintained tax avoidance². The OECD has already prior to this recognised the need for increasing the transparency of tax planning services³. In November 2017,

a formal opinion by the OECD Forum on Tax and Crime set the limitation of operations by parties that provide harmful tax planning and tax evasion services, e.g. by increasing criminal liability, as its first objective⁴. For example, in its present form, Finnish legislation does not lay down any sanctions for assistance in tax evasion.

The role of companies that provide tax services in the avoidance of taxes is multifaceted. The leaked information has revealed that some banks and tax consultancy firms have helped their clients in illegal tax evasion and even tax fraud with measures such as establishing dummy companies in secrecy jurisdictions for their clients. Companies that provide tax services also help their client companies in aggressive tax planning, meaning in how to exploit loopholes in tax laws to minimise their tax liability without breaking the law.

Business that supports the tax haven economy is also carried out from Finland: the leaks have revealed that there are Finnish companies and private persons who have wanted to avoid taxes and intermediary companies that acted as service providers for them. The tax consultancy market in Finland is experiencing growth⁵. Some consultancy is also linked to activities that actively seek to minimise tax liability.

Companies' aggressive tax planning, fuelled by tax services providers, is a socially significant phenomenon. According to an estimate compiled by Finnwatch, Finland loses 430 to 1,400 million euros annually in corporate taxes as a result⁶. According to a careful

1 The European Union is currently investigating Luxembourg's suspected of granting illegal state aid in the form of taxes. See e.g. European Commission 2015, Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules, http://europa.eu/rapid/press-release_IP-15-5880_fi.htm (viewed on 28 November 2017) and 2016, State aid: Commission opens in-depth investigation into Luxembourg's tax treatment of GDF Suez (now Engie), http://europa.eu/rapid/press-release_IP-16-3085_en.htm (viewed on 22 June 2017)

2 European Parliament, 2017/2013 (INI), available at: <http://www.europarl.europa.eu/cmsdata/122787/2017-06-30%20Draft%20report.pdf>

3 Action 12 of the OECD BEPS project concerns mandatory disclosure, and on the basis of this the European Commission has proposed new transparency provisions for firms operating in the tax planning sector. OECD/G20, Base Erosion and Profit Shifting Project, Mandatory Disclosure Rules, Action 12: 2015 Final Report, <http://www.oecd.org/tax/mandatory-disclosure-rules-action-12-2015-final-report-9789264241442-en.htm> (viewed on 22 June 2017); European Commis-

on, 21 June 2017, Press release, http://europa.eu/rapid/press-release_IP-17-1663_fi.htm

4 Fifth OECD Forum on Tax and Crime, Closing Statement, available at: <http://www.oecd.org/tax/crime/closing-statement-oecd-forum-on-tax-and-crime-november-2017.pdf>

5 Kauppalehti, 25 February 2016, Big Four -yhtiöt uskovat verokonsultoinnin kasvuun, <https://www.kauppalehti.fi/uutiset/big-four-yhtiöt-uskovat-verokonsultoinnin-kasvuun/2HStvtV4> (viewed on 1 December 2017)

6 Finnwatch, 2016, Jäävuorta mittaamassa. Arvioita monikansallisten yritysten aggressiivisen verosuunnittelun

estimate by the OECD, the worldwide corporate tax losses resulting from aggressive tax planning total 75 to 180 billion euros each year⁷. These figures do not include tax losses resulting from illegal tax evasion or financial crime. Tax avoidance has the greatest negative impact on developing countries, which have been estimated to lose up to more than 100 billion dollars as a result of aggressive tax planning by corporations⁸.

This report aims to clarify which companies based in Finland provide assistance and advise companies and other firms on tax planning, which in its extreme forms can be considered aggressive tax planning and tax evasion. Tax planning by private persons is touched on primarily in the section on tax services provided by the financial sector.

Tax arrangements related to aggressive tax planning are not normally made public and they are in the scope of business secrecy. In Finland, the situation is particularly difficult, as rulings by our administrative courts on tax matters are only partially published⁹. This further hampers discussion on the responsibility of the operations of companies that provide tax services.

For this report, Finnwatch has taken several steps in its effort to access information on tax planning. It has sent surveys to companies, read through materials on data leaks and the marketing materials of companies themselves as well as submitted data requests to pensions institutes that come within the Act on the Openness of Government Activities. A large part of tax services still remain a mystery.

The report's structure is as follows: the first chapter runs through the different types of tax services provided to corporations. The second chapter introduces the key companies that provide tax planning services to Finns and presents one example of tax arrangements that tax consultants have planned for a pension institute's fund. The third chapter of this study gives a rundown of the study's conclusions and the fourth chapter lists recommendations for the prevention of aggressive tax planning services and making them transparent.

This report has been produced with crowd-funding as part of Finnwatch's Sustainable Finance Research Programme.

laajuudesta Suomessa, available at: <https://www.finnwatch.org/images/pdf/jaavuori.pdf>

7 The sum accounts for 4–10 per cent of all corporate tax revenue. OECD, 2015, *Measuring and Monitoring BEPS*, s. 81, 101, available at: <http://www.oecd.org/tax/measuring-and-monitoring-beps-action-11-2015-final-report-9789264241343-en.htm> (viewed on 14 June 2017)

8 UNCTAD, 2015, *World Investment Report 2015*, available at: http://unctad.org/en/Publications-Library/wir2015_en.pdf, on the problems involved in assessments, Finnwatch, 2016, *Jäävuorta mittaamassa*, available at: <https://finnwatch.org/images/pdf/jaavuori.pdf>

9 See. The Act on the Publicity of Court Proceedings in General Courts (370/2007) and the Act on the public disclosure and confidentiality of tax information

1. Tax services for companies

Tax management by large corporations often requires special expertise. A company cannot neglect to file tax returns and pay taxes merely by citing that it has a lacking knowledge of tax legislation in different countries. Taxes are also an expense like any other for companies, and, for this reason, it is in the interest of companies to utilise methods of tax planning to identify the possibilities for minimising their tax liability.

The units in Finnish companies that are dedicated to tax matters are often small and many companies turn to outside tax consultants to manage their taxes¹⁰. In this report the tax services provided by these outside consultants are divided as follows¹¹ 1) active tax planning, 2) tax consultancy including assessment of tax impacts and legality, 3) assistance with dispute resolution and 4) management of tax obligations such as filing tax returns (compliance functions).

Active tax planning refers to the planning of tax-efficient structures or assistance in this planning – in practice, the minimisation of the amount of tax to be paid. The aim of tax planning might be to avoid double taxation. In the other extreme, the aim of so-called aggressive tax planning might be zero taxes.

When procuring *tax consultation* services, a tax service company is paid for determining the international agreements, local tax laws and other provisions that can be applied to its client company's operations. The assessment of tax impacts and legality can be purchased as part of tax consultancy, for example when a company is planning to expand its business operations to a new geographical area. The difference between tax consultancy

and active tax planning might sometimes be blurred (see the example on page 12).

In the case of *dispute resolution*, a tax service company acts as an assistant to their tax liable client in unofficial talks with tax authorities concerning the client's taxation and in processes that involve official mediation, authorities, courts of law or arbitration.

The management of obligations, i.e. *compliance functions* ensure that a company complies with statutory tax obligations. Compliance services can include, for example, filing of tax returns and the documentation of transfer pricing.

This report focuses, in particular, on active tax planning in which outside service providers provide assistance.

According to the Finnish Tax Administration's definition, *tax planning* refers to a legal activity where conditions and measures are selected for a company's operations or a private person's investments in an optimised manner from the perspective of taxation¹². An optimised option often refers to the anticipation of tax consequences and the minimisation of tax liability in a manner that is generally accepted in taxation and legal policy and which are in the spirit of tax legislation¹³. The key aim of international tax planning is to avoid international multiple taxation¹⁴.

Active tax planning can also be so-called *aggressive tax planning*, in which case it is morally questionable from the perspective of the spirit in which the law was written. Aggressive tax planning refers to legal or tax avoidance or tax avoidance that falls in the grey area between legal and illegal, which

¹⁰ Finér L., Verotuslehti, 5/2013

¹¹ The division is loosely based on the division used by Suomen Veroasiantuntijat ry in their ethical guidelines (available at: <http://veroasiantuntijat.fi/saannot/eettiset-ohjeet/>). However, in Finnwatch's report active tax planning is dealt with as a separate service, whereas the division used by Finnish tax expert association Suomen veroasiantuntijat ry places it as part of consultancy and statements provided in relation to tax planning.

¹² Finnish Tax Administration, Veroparatiisit, [https://www.vero.fi/fi-FI/Tietoa_Verohallinnosta/Veroparatiisit/Veroparatiisit\(27050\)](https://www.vero.fi/fi-FI/Tietoa_Verohallinnosta/Veroparatiisit/Veroparatiisit(27050)) (viewed on 6 June 2017)

¹³ Finnish Tax Administration, Verosuunnittelua vai veron kiertämistä, https://www.vero.fi/fi-FI/Syventavat_veroohjeet/Henkiloasiakkaan_tuloverotus/Verosuunnittelua_vai_veron_kiertamista (viewed on 6 June 2017)

¹⁴ Helminen M., Kansainvälinen verotus, pg. 583

is based on the exploitation of inconsistencies and gaps between national tax laws and international legislation¹⁵. The aim of aggressive tax planning is the avoidance of taxes as a result of which taxes are not paid to the countries in which a company's profit and value are created. ¹⁶

15 Knuutinen, R., Veron minimointi ja yrityksen yhteiskuntavastuu, teoksessa Verotus 2/2013, s.184. Finnwatch 2014, Rikkinäinen veropalapeli. Oikeudenmukaisuuden toteutuminen Suomen solmimissa verosopimuksissa, pg. 10, available at <https://www.finnwatch.org/images/pdf/verosopimukset5.pdf>

16 According to the OECD, tax planning is aggressive if a multinational company makes international arrangements within a group where: 1) the company's profits are transferred out of the country, where the operations that led to the accumulation of profits have taken place, and as a result of this

2) the company avoids its tax liability completely or achieves a very low level of taxation. OECD, 2015, Measuring and Monitoring BEPS, pg. 18, available at: <http://www.oecd.org/tax/measuring-and-monitoring-beps-action-11-2015-final-report-9789264241343-en.htm>. More information on the concept of aggressive tax planning: Knuutinen R., 2015, Mitä on ns. aggressiivinen verosuunnittelu? Taxation 1/2015

2. Tax service companies that operate in Finland and their tax liability

Numerous companies of a very diverse range provide tax consultation services in Finland. The size of service providers varies from companies with one or a few employees to multinational corporate networks, with thousands of tax experts in various countries.

Tax services can be the company's main line of business or a company can provide tax services as part of its main activities, which can be accounting and financial management services or investment services. The content of tax services and the customer groups served by these companies vary – clients of tax service companies include large international listed and unlisted companies, small and medium-sized companies, private equity funds, foundations, associations, public sector firms as well as private persons.

The report by the European Parliament's PANA Committee highlighted that tax services are provided by a very mixed group of actors that are not necessarily monitored by anyone¹⁷. This observation by the PANA Committee also applies to Finland's tax planning markets. For example, the Finnish Bar Association's Code of Conduct for Attorneys-at-Law¹⁸ only binds to attorneys, who generally work in law firms and represent only a small portion of the companies that provide tax services. Furthermore, this Code of Conduct does not specifically give an opinion on tax liability issues (more on the sector's self-regulation on pages 20 and 22).

The interviews and surveys carried out for this report also highlighted the skills and competence of the mixed group of actors. Parties, who do not necessarily have the needed know-how on assessing the appropriateness of arrangements, also provide tax consultancy services for their clients. This leads to disputes with the tax authority.

Companies that provide tax services in Finland are not separately entered into the Standard Industrial Classification maintained by authorities, but these service providers are found under law firms and attorneys-at-law offices, associations that provide other legal services, audit and tax consultancy firms, as well as companies that provide accounting and financial statement services. Finnwatch asked the Finnish Patent and Registration Office for data on the largest companies registered under the aforementioned sectors and went through the marketing materials published by more than 200 companies searching for information on tax services. On the basis of published information, 84 companies were sent more detailed surveys on the companies' tax services. Additionally, the chapter concerning financial sector actors includes Finland's five largest banks.

Companies that provide tax consultancy are divided in 5 groups: 1) auditing and consultancy professional services networks, 2) accounting companies, 3) law firms and attorney-at-law offices, 4) other tax expert companies, and 5) finance sector service providers.

The following sections of this chapter give more detail on the companies that provide tax planning services in Finland, the cases of aggressive tax planning or tax evasion linked to these, as well as the companies' responses to Finnwatch's survey.

2.1 BIG 4 – LARGE INTERNATIONAL AUDIT AND CONSULTANCY PROFESSIONAL SERVICES NETWORKS

As a result of mergers, the international tax planning markets are now dominated by just a few audit and consultancy networks. The sector's market leaders are currently

¹⁷ European Parliament, 2017/2013 (INI), available at: <http://www.europarl.europa.eu/cmsdata/122787/2017-06-30%20Draft%20report.pdf>

¹⁸ Code of Conduct available at https://www.asianajajaliitto.fi/files/1980/Hyva_asianajajatapa_fi_www.pdf

Deloitte¹⁹, PwC²⁰, EY²¹ and KPMG²², which are known as the Big 4. Prior to 1989 the Big 4 was the Big 8²³ – the last merger took place in 2002 when audit company Arthur Andersen, which was known as one of the Big 5, relinquished its licence as a result of the Enron scandal and the company's offices outside of the United States merged with KPMG²⁴.

Independent member firms that belong to the Big 4 corporate networks operate in nearly every country worldwide including Finland. Professional consultancy networks are built around a global membership community that helps companies form an alliance, but without forming a global group. The membership community acts as a central unit that coordinates the member companies and their mutual cooperation. It does not provide expert services, as these are only provided by member companies, of which there is generally only one per country²⁵.

The member firms enter into a membership contract with the membership community on the basis of which the member firms commit to complying with the network's joint strategy and principles that guide their activities as well as the obligations that come with these. In addition to the brand, member firms are provided shared databases and information systems, as well as the contact details

for other member firms that operate in different countries. With the help of an expert network, member firms can provide services globally and direct their clients to one or more other member companies in various countries according to each client's needs²⁶. Private member companies often follow a shareholder-based ownership model, which is familiar from law firms, where selected experienced employees, who have been appointed partners, own the member firm.

Networks made up of member firms provide audit, taxation, restructuring and management consultancy services. The range of provided tax services is extensive from active tax planning to the management of statutory obligations.

Every Big 4 network is known to also have assisted its clients in aggressive tax planning. They have either tailored tax minimisation solutions for the needs of individual clients or marketed and sold aggressive tax products, which they have developed in cooperation with other companies that provide tax services, to a large group of clients. A number of these cases are described on pages 14–16.

2.1.1 PWC

The largest Big 4 company in Finland is PwC Finland (PricewaterhouseCoopers Oy), which had a turnover of 135.2 million euros in 2017²⁷. At the end of its financial period that ended on 30 June 2017, the company employed 994 people. PwC Finland's tax and legal services unit employs around 180 people, of which around 130 work primarily in different types of tax consultancy services²⁸. The international PwC network operates in a total of 158 countries and its member companies employ a total of more than 230,000

19 Deloitte website: <https://www2.deloitte.com/global/en.html> (viewed on 22 June 2017)

20 PwC website: <https://www.pwc.com/gx/en.html> (viewed on 22 June 2017)

21 EY is an abbreviation of the name Ernst & Young. EY website: <http://www.ey.com/gl/en/home> (viewed on 22 June 2017)

22 This is an abbreviation of the names Klynveld Peat Marwick Goerdeler. KPMG website: <https://home.kpmg.com/xx/en/home.html> (viewed on 22 June 2017)

23 The Big 8 comprised the following corporate networks: 1) Arthur Andersen, 2) Arthur Young & Co., 3) Coopers & Lybrand, 4) Ernst & Whinney, 5) Deloitte, Haskins & Sells, 6) KPMG, 7) Touche Ross, and 8) Price Waterhouse. Accounting Verse, Big 4 Accounting Firms, <http://www.accountingverse.com/articles/big-4-accounting-firms.html> (viewed on 8 June 2017)

24

25 For example, PwC can have more than one legally independent PwC group in some countries, but their activities are different from one another. This difference is due to legal requirements related to the differing activities of auditing bodies. PwC, Petri Seppälä and Markku Hakkarainen, meeting 31 May 2017

26 For example, PwC Finland can utilise the services of the entire global PwC network either so a Finnish client is directed to use the services of a PwC member firm located in another country or the Finnish member firm acts as an intermediary in managing the client relationship with the member firm located in another country. PwC, Petri Seppälä and Markku Hakkarainen, meeting 31 May 2017

27 PwC, Key Figures, <http://www.pwc.fi/fi/tietoa-meista/avainluvut.html> (viewed on 30 Oct 2017)

28 PwC, Petri Seppälä, email 13 June 2017

people. The PwC network's global membership community is PricewaterhouseCoopers International Limited, which is based in the UK.²⁹

PwC does not publish information on its tax service clients, which means that only few of these are known to the public. However, some cases of aggressive tax planning, which have been planned, marketed and implemented by PwC's member firms have gained public attention. Information on PwC's role in these is based on e.g. data leaks, information published in financial statements as well as court rulings.

Perhaps the PwC tax scandal best known to the general public is Lux Leaks, where former PwC employee Antoine Deltour leaked the company's documents in 2014³⁰. The Lux Leaks materials revealed that PwC's Luxembourg-based member firm had acquired hundreds of secret tax deals (ATA agreements³¹) on behalf of its clients from Luxembourg's tax authority, which have been internationally criticised. As a result of these agreement, hundreds of companies transferred hundreds of millions of euros in taxable income to Luxembourg due to its lower level of taxation.³²

A number of Finnish companies also exploited these tax arrangements drawn up by PwC.³³ Representatives of PwC Finland

have defended the arrangements PwC made with Luxembourg's tax authority stating, for example that this was a practice based on long-standing legislation by Luxembourg³⁴. The European Commission is currently investigating numerous ATA agreements approved by Luxembourg to determine whether companies were granted tax benefits in violation of EU law³⁵. Luxembourg's ATA agreements have also been investigated from the perspective of Luxembourg's own legislation. A study by Omri Marian, Professor of Law at the University of California specialised in tax law, examined more than 170 ATA agreements in Luxembourg. According to his assessment, tax deals have systematically supported aggressive tax planning by companies and some of the agreements have even violated Luxembourg's own laws³⁶.

According to the UK's Public Accounts Committee, PwC's tax consultancy services have taken very great legal risks in aggressive tax planning. According to information attained from a former employee of PwC's audit working group, PwC has approved or provided its clients with tax products although PwC had assessed that there was only a 25 per cent chance that these would be considered legal. As a company, PwC denied this information at a hearing before the Parliament.³⁷

29 PwC Global, People, <https://www.pwc.com/gx/en/about/global-annual-review-2017/who-we-are/people.html> (viewed on 30 October 2017)

30 The documents are available to the public in a database compiled by the Consortium of Investigative Journalists (ICIJ). ICIJ, Explore the documents: Luxembourg leaks database, <https://www.icij.org/project/luxembourg-leaks/explore-documents-luxembourg-leaks-database> (viewed on 27 June 2017)

31 ATA refers to Advance Tax Agreements that the State of Luxembourg has entered into with individual companies.

32 The Guardian, Luxembourg tax files: how tiny state rubber-stamped tax avoidance on an industrial scale, <https://www.theguardian.com/business/2014/nov/05/-sp-luxembourg-tax-files-tax-avoidance-industrial-scale>

33 According to materials published by the International Consortium of Investigative Journalists (ICIJ), at least four Finnish companies have been involved: construction company SRV, packaging company Huhtamäki, Suomen Lähikauppa Oy, and forest capital company Dasos Capital Oy. In addition to these, PwC has acquired tax rulings for three foreign companies, which have a link to Finland either in form of subsidiaries

based in Finland or a Finnish Director; these companies are IK Investment Partners, Aitor Funds and US-based accident insurance company AIG. Tax memos sent by PwC to Luxembourg's tax authority on behalf of Dasos Capital Oy are covered in Finnwatch's report "Verovälttelyä kehitysyhteistyövaroilla". The fund arrangement planned for Dasos Capital was aggressive tax planning, and some of the arrangements may also constitute tax evasion.

34 PwC, Petri Seppälä and Markku Hakkarainen, meeting 31 May 2017

35 For example, in October 2017 the Commission concluded its investigation on the tax benefits given to Amazon and stated that they had violated EU law. http://europa.eu/rapid/press-release_IP-17-3701_en.htm

36 Marian Omri Y., The State Administration of International Tax Avoidance, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685642

37 House of Commons Committee of Public Accounts, 2013, Tax avoidance: the role of large accountancy firms, available at: <https://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/870/870.pdf>

PwC Finland told Finnwatch that it does not give percentage estimates on the legality of tax arrangements. Clients are told, if there is a risk that the action planned by the client may be interpreted as tax evasion by tax authorities. According to PwC, the client, meaning the taxpayer, makes the final decision on how it will deal with each individual matter's taxation.³⁸

In its response to Finnwatch's survey PwC said that Finland's tax authorities had taken issue with the tax solutions entered into by some of PwC Finland's clients and that PwC had advised the clients in drawing up these solutions. According to PwC, in the cases that have been submitted to courts, the tax authority's view has been overturned, meaning according to the interpretations of the courts, the choices and entries made by the taxpayer have been correct with regard to taxation.

The PwC Global Tax Code of Conduct do not go beyond statutory obligations. The PwC Global Tax Code of Conduct emphasises the taxpayer's right to manage their tax affairs provided they act within the law³⁹. PwC Finland told Finnwatch that aggressive tax planning is a subjective concept the content of which depends on the assessing party⁴⁰. PwC itself did not give an opinion on the content of the term. The company emphasises that all the consultation it provides is based on valid legislation and guidelines given by authorities.

38 PwC, Petri Seppälä and Markku Hakkarainen, meeting 31 May 2017

39 "It is a general principle that taxpayers have a right to manage their tax affairs provided they act within the law." <https://www.pwc.com/gx/en/services/tax/code-of-conduct.html>

40 PwC, Petri Seppälä and Markku Hakkarainen, meeting 31 May 2017

PwC Finland opposes mandatory public country-by-country reporting- markets its own tax reporting model to companies

Numerous companies that have gotten caught for tax evasion have launched communication campaigns by publishing different types of tax footprint report. PwC, whose reporting model has been internationally criticised, has also marketed these tax footprint report models⁴¹. The reporting models have been criticised, for example, for exaggerating the tax impacts of a company by including VAT paid by customers or the income taxes paid from the company's employees' income in their calculations.

PwC Finland also markets tax footprint reporting. According to the company, it describes the taxes accumulated by the company's operations which benefit society and the impact and division of the company's operations in different countries⁴².

At the same time as PwC Finland markets its tax footprint reporting, it opposes mandatory public country-by-country reporting for multinational companies, which organisations that act in support of fair taxes, including Finnwatch, support and have promoted. Country-by-country reporting would facilitate the assessment of a company's effective corporate tax rate, tax planning structures and whether the company pays taxes in the country where its profit and value have been created. PwC says that it regularly assists its clients in drawing up statutory non-public country-by-country reports that are submitted to tax authorities and in collecting the necessary information.

PwC Finland has felt that country-by-country reporting is problematic from the perspective of competitiveness, the protection of business secrecy and the administrative burden that it causes⁴³.

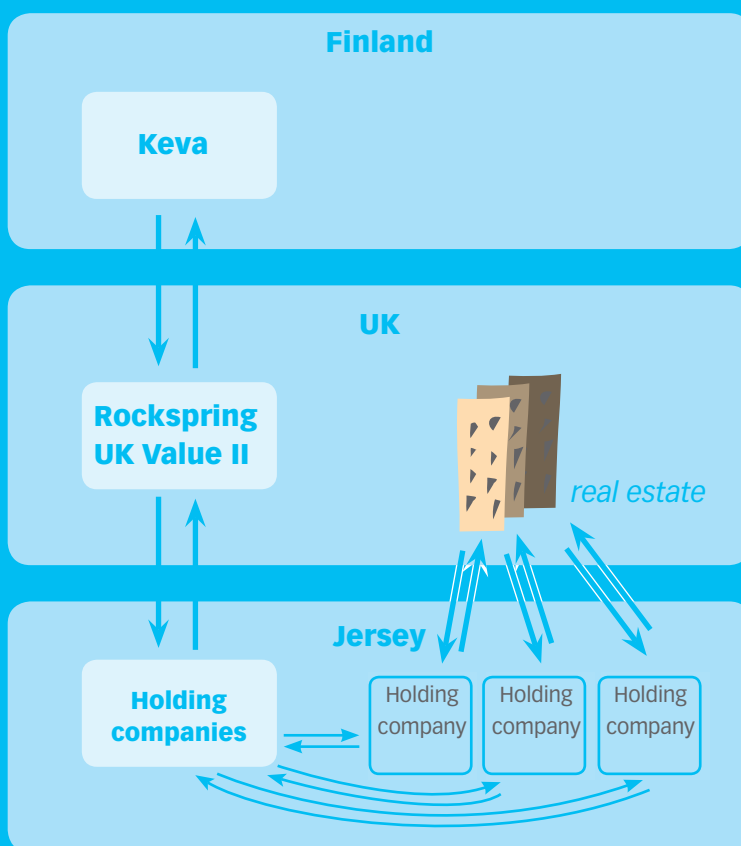
41 E.g. The American Prospect, Transparently Dishonest, <http://prospect.org/article/transparently-dishonest> (viewed on 17 November 2017); Tax Research UK, PwC, supporting the pretence that tax is paid when it isn't, <http://www.taxresearch.org.uk/Blog/2010/11/29/pwc-supporting-the-pretence-that-tax-is-paid-when-it-isnt/> (viewed on 17 November 2017)

42 PwC, Key Tax Footprint, <http://www.pwc.fi/fi/palvelut/veroneuvonta/verojalanjalki.html> (viewed on 16 June 2017)

43 According to Seppälä, no one other than authorities should present their views on the correctness of taxation in individual cases. PwC, Petri Seppälä, 4 September 2015, Veroraportointi ei poista ongelmia tai tuo kasvaa, <https://uutishuone.pwc.fi/veroraportointi-ei-poista-ongelmia-tai-tuo-kasvaa/> (viewed on 27 June 2017)

CASE: PwC and KPMG helped with tax arrangements for Keva’s real estate fund, which aimed to avoid taxes in the UK

Keva, which is responsible for the pensions of municipal, state, church and Kela employees in Finland, has invested 56.7 million euros (acquisition value) in the Rockspring UK Value II property investment fund⁴⁴. Correspondence from 2014 between KPMG and Keva acquired as a result of a data request issued to Keva gives a detailed description of the tax haven structures related to the Rockspring UK Value II Fund, which carries out real estate investments in the UK, which aim at the avoidance of tax liability in Britain. Keva’s email correspondence reveals that the original tax memo on the tax impact of the fund structure was drawn up by PwC⁴⁵, in addition to which Keva had commissioned a second opinion on the tax impacts of Keva’s investment from KPMG Finland.



According to KPMG’s statement that Finnwatch has in its possession, tax avoidance by the Rockspring UK Value II Fund registered in Britain will be implemented by establishing a holding company on the island of Jersey, a well-known tax haven. The Jersey-based holding company will then establish numerous new companies in Jersey, and these will be the companies that purchase real estate in the UK. Instead of a direct real estate investment, the Keva Fund will invest its money through Jersey.

will be utilised in the investments from Jersey to Britain. Interest paid on debts will reduce the taxable real estate income in Britain.

Companies based in Jersey do not pay any tax on real estate income or income on interest from the UK in Jersey nor do they have to pay taxes when transferring their profits to the Jersey-based holding company. Jersey does not tax profits distributed to foreign investors, so a fund located in Britain gets its investment profits back from Jersey without tax consequences.

Keva has blacked out part of the text in the statement, but it can be determined from the visible portion of the information (which mentions that companies based in Jersey receive income on interest from Britain) that leveraging

44 Keva’s financial statement, 2016, available at: https://www.keva.fi/globalassets/2-tiedostot/tama-on-keva-tiedostot/sijoitukset-talous-ja-raportointi/2016/tilinpaatos_keva_2016.pdf

45 The memo does not mention the country in which the PwC member firm in question operates.

According to Britain's legislation, income acquired by funds will be as a rule taxed as income to fund shareholders when the income originates from Great Britain or is related to business carried out there. If the Keva Fund had invested directly in British real estate, Britain could have collected a tax for real estate income.

As the ownership of the real estate was routed through Jersey, Britain's tax authority was apparently left empty-handed as regards the fund's income. In its tax statement, KPMG's expert gives a frank description of the matter: "the income of the fund would [not] be seen as coming from Great Britain even if it was indirectly made up of income from British real estate". KPMG confirms in its statement that it considers the suggested fund structure tax-efficient for Keva, in other words, due to the arrangement the fund and Keva would pay as small an amount of taxes for their investment activities as possible.

In its response to Finnwatch, Keva states that the fund's tax planning structure was not built specifically for Keva, but that it applied to all parties who invested in the fund. According to Keva, the structure is a normal structure used internationally in real estate investments. Keva emphasises that its task is to secure the funding of Finland's municipal pension scheme with its investments. Thus, it is not reasonable for the company to pay more taxes than what international tax legislation requires. Keva's statement can read in full in Appendix 1 of this report.

According to KPMG, the aforementioned real estate investment through Jersey is not a tax arrangement. The company emphasises that it has not assisted in these arrangements, it has only analysed the tax matters related to the fund structure⁴⁶.

46 KPMG, Hanna Höglund, email 29 November 2017

2.1.2 KPMG

The KPMG network's membership community is the KPMG International Cooperative ("KPMG International"), which is based in Switzerland. The network of KPMG member companies operates in 152 countries and employs nearly 190,000 people⁴⁷. Finland's member firm is KPMG Oy Ab. Its turnover for its financial period ending in September 2016 was 120 million euros⁴⁸. The combined turnover for all KPMG member companies in 2016 was over 25 billion US dollars⁴⁹. In Finland, KPMG employs more than 1,000 people in 23 localities⁵⁰. Around 200 of these employees provide tax services as their primary task⁵¹.

KPMG does not publish information on its clients either, and the examination of its involvement in the planning of aggressive tax arrangements has only been possible through international cases that have gained public attention. For the most part, the cases that have gained public attention are based on rulings by courts, where legal documents related to taxation are made available to the public more extensively than is the practice in Finland (see pages 15–16).

In Finland, KPMG has been suspected of being involved in the tax arrangements for the acquisition of health and care service company Mehiläinen by an international equity investor. As of result of these tax arrangement, the corporate taxes paid by the company dropped significantly.⁵² Mehiläinen, which also used KPMG as its

47 KPMG, Overview, <https://home.kpmg.com/xx/en/home/about/overview.html> (viewed on 30 October 2017)

48 KPMG, KPMG:n liikevaihto kasvoi 12,1 prosenttia 120 miljoonaan euroon, <https://home.kpmg.com/fi/fi/home/media/lehdistotiedotteet/2016/12/kpmg-n-liikevaihto-kasvoi-12-1-prosenttia-120-miljoonaan-euroon.html> (viewed on 30 October 2017)

49 KPMG, Performance, <https://home.kpmg.com/xx/en/home/about/performance.html> (viewed on 25 October 2017)

50 About KPMG, <https://home.kpmg.com/fi/fi/home/tietoa-kpmgsta/kpmg-yrityksena.html> (viewed on 27 June 2017)

51 KPMG, Juha Sääsilahti, email 16 June 2017

52 Yle, Mehiläinen kiisti "härskin verokikkailun" syksyllä 2011 – Oikeus pui nyt, oliko sittenkin verojen välttelyä, <https://yle.fi/uutiset/3-9820480> (viewed on 25 October 2017)

Examples of the involvement of Big 4 companies in aggressive tax arrangements or tax evasion

- In 2014, the UK's Upper Tribunal⁵³ found that the complicated arrangements for intra-company loans that PwC had planned for its client companies constituted tax evasion. The ruling in this case was against Vocalspruce, a subsidiary of property business Brixton, which was at that time listed on the British stock exchange. As a result of the judgement, the company was charged a total of 88 million pounds in back taxes.⁵⁴
- In 2016, the UK's Upper Tribunal⁵⁵ stated that the loan arrangement-based tax arrangement that EY had developed for the Greene King brewery company constituted tax evasion. The company was ordered to pay 9 million pounds in back taxes⁵⁶.
- EY advised Disney and Koch Industries in an arrangement which channelled the companies' profits to their subsidiaries in Luxembourg in 2009–2013. In this manner, the companies were taxed less than one per cent for profits that amounted to hundreds of millions of dollars. Disney also established a so-called intra-group bank in Luxembourg, which approved high-interest loans for the company's subsidiaries located in other countries thus reducing its taxable profit⁵⁷.
- EY representatives in the United States have also personally had dealings with the legal system. Four EY shareholders were sentenced to imprisonment in 2010 for tax fraud. EY had planned and mass-marketed tax avoidance mechanisms for large corporations and wealthy private persons and concealed information related to these from tax authorities. Ultimately, EY paid the United States tax authority more than 120 million dollars in a settlement, as a result of which criminal charges against the company were dropped.⁵⁸
- In the UK, Deloitte planned a bonus scheme for more than 300 bankers based in Deutsche Bank's London locations that utilised the Cayman Islands, which is a tax haven. This plan helped the bank and the bankers employed by the bank to avoid 92 million pounds in income tax and social security contributions. In 2016, a court ruled that the reward scheme was created for the express purpose of tax avoidance and, thus, violated tax legislation. The USB bank also utilised the same type of arrangement planned by Deloitte.⁵⁹
- In 2017, a British court found that a tax arrangement developed by Deloitte for betting company Ladbrokes was tax evasion. The arrangement saw Ladbrokes put one of its subsidiaries artificially in debt to another subsidiary, so that the losses could be utilised in taxation. According to the HMRC, 10 other companies had also tried to avoid taxes with similar arrangements planned by Deloitte.⁶⁰
- In 2013, a stir arose in the UK after Deloitte openly marketed tax haven structures that aimed at minimising tax liability for companies that invested in Africa's poorest countries.⁶¹ According to Deloitte's public tax memo

53 Upper Tribunal (Tax and Chancery)

54 Vocalspruce Ltd v The Commissioners for HMRC [2014] EWCA Civ 1302 (30 October 2014); HMRC, HMRC wins in court have protected over 1£ billion, <https://www.gov.uk/government/news/hmrc-wins-in-court-have-protected-over-1-billion>

55 Upper Tribunal (Tax and Chancery)

56 EY also marketed the plan to many other companies. After the court's decision the tax authority estimated that it would receive more than 30 million pounds in back taxes from the companies that had utilised the plan. Wealth Manager, Taxman calls time on Ernst & Young tax avoidance scheme, 29.7.2016, <http://citywire.co.uk/wealth-manager/news/taxman-calls-time-on-ernst-and-young-tax-avoidance-scheme/a937381> (viewed on 4 October 2017)

57 The New York Times, 10 December 2014, Disney and Koch Industries Had Luxembourg Tax Deals, Journalists' Group Says, <https://www.nytimes.com/2014/12/11/business/disney-and-koch-industries-had-luxembourg-tax-deals-journalists-group-says.html> (viewed on 13 October 2017)

58 Forbes, 1 March 2013, Ernst & Young Pays \$123 Million, Avoids Tax Shelter Prosecution, <https://www.forbes.com/sites/janethnovack/2013/03/01/ernst-young-pays-123-million-avoids-tax-shelter-prosecution/#648274062464> (viewed on 11 July 2017)

59 The decision of the court is available at <http://www.bailii.org/uk/cases/UKSC/2016/13.html>

60 HMRC, press release 25 February 2017, Ladbrokes' luck runs out in £71 million tax avoidance case, available at: <http://www.mynewsdesk.com/uk/hm-revenue-customs-hmrc/pressreleases/ladbrokes-luck-runs-out-in-71-pounds-million-tax-avoidance-case-1819320>

61 Guardian, Deloitte promotes Mauritius as tax haven to avoid big payouts to poor African nations, <https://www.theguardian.com/business/2013/nov/03/deloittes-tax-savings-investments-in-poor-countries> (viewed on 27 October 2017)

“Investing in Africa through Mauritius”⁶², investing in Mozambique through a holding company based in Mauritius was profitable because by exploiting the tax agreement between the two countries companies could ensure that the withholding tax for dividends would fall to half of what it could be. The arrangement was marketed using an investment from China to Africa as an example.⁶³

- In 2013, Deloitte was responsible for the audit of café chain Starbucks, which was in the midst of a tax scandal, while at the same time Deloitte also provided tax consultancy for Starbucks. Deloitte stated publicly that Starbucks did not pay corporate taxes because the company’s rent and property expenses in Britain were so great that they caused the company’s result to be a negative one.⁶⁴ In reality, Starbucks avoided taxes by charging its subsidiaries for the use of its brand, which is registered in the Netherlands, a tax haven⁶⁵. After rearrangements carried out as a result of public debate, Starbucks paid nearly as much corporate taxes in 2015 in the UK as it had in total over its past 14 years of operation⁶⁶.
- In the United States, KPMG acts as auditor and tax consultant for multi-sector company General Electric (GE), which has jumped from one tax scandal to the next over the past ten years⁶⁷. In 2014, it was revealed that KPMG

had leased out its own tax experts to GE, even though it acted as the company’s auditor at the same time. This was considered to have a negative impact on KPMG’s credibility as an independent auditor.⁶⁸

- In 2015, a US court found that the aggressive tax arrangements KPMG had created together with Barclays Bank, which aimed to utilise the gaps between the US and UK tax systems to create hundreds of millions of dollars in foreign tax benefits in US taxation for large client companies, were illegal⁶⁹.
- In the United States, KPMG’s shareholders were found liable of a crime in a court case that ended in 2010⁷⁰. In its report on tax planning by the Big 4, the United States Senate Committee on Governmental Affairs stated that KPMG had sold tax avoidance products⁷¹ between 1996 and 2002 that resulted in 2.5 billion dollars in tax losses for the US. According to the report, KPMG had marketed the tax product aggressively by utilising e.g. telemarketing to find new clients.⁷² A total of 17 KPMG employees were indicted⁷³ of whom three were finally sentenced to imprisonment and fines for fraud⁷⁴. Charges against KPMG itself were dropped in 2005 after KPMG paid a 456 million dollar settlement to the State and the company agreed

62 Deloitte, 2013, Investing in Africa through Mauritius, available at: <https://www.kepa.fi/tiedostot/deloitte-mauritius.pdf>

63 The harm caused to developing countries by shopping for the best deals through tax havens like Mauritius was covered in Finnwatch’s report on tax treaties. Finnwatch, 2014, Rikkinäinen veropalapeli, Oikeudenmukaisuuden toteutuminen Suomen solmimissa verosopimuksissa, available at: <https://www.finnwatch.org/images/pdf/verosopimukset5.pdf>

64 The Independent, 26 April 2013, Starbucks is right not to pay UK tax because it makes no profit, says coffee chain’s tax advisor, <http://www.independent.co.uk/news/uk/home-news/starbucks-is-right-not-to-pay-uk-tax-because-it-makes-no-profit-says-coffee-chains-tax-advisor-8589459.html> (viewed on 13 October 2017)

65 Reuters, 15 October 2012, Special Report - How Starbucks avoids UK taxes, <http://uk.reuters.com/article/uk-britain-starbucks-tax/special-report-how-starbucks-avoids-uk-taxes-idUKBRE89E0EW20121015> (viewed on 13 October 2017)

66 In 2015, Starbucks paid 8.1 million pounds in taxes whereas after 1998 it had only paid a total of 8.6 million pounds, despite its 3 billion pounds in sales. The Guardian, 15 December 2015, Starbucks pays UK corporation tax of £8.1m, <https://www.theguardian.com/business/2015/dec/15/starbucks-pays-uk-corporation-tax-8-million-pounds> (viewed on 13 October 2017)

67 E.g. New York Times, 24 March 2011, G.E.’s Strate-

gies Let It Avoid Taxes Altogether, <http://www.nytimes.com/2011/03/25/business/economy/25tax.html?mcubz=2>; US Securities Exchange Commission press release, 4 August 2009, SEC Charges General Electric With Accounting Fraud, <https://www.sec.gov/news/press/2009/2009-178.htm> (viewed on 11 July 2017)

68 Securities and Exchange Commission, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: KPMG, LLP, available at: <https://www.sec.gov/litigation/investreport/34-71390.pdf>

69 Salem Financial Inc. v. United States, 2014-5027, available at: <https://law.justia.com/cases/federal/appellate-courts/cafc/14-5027/14-5027-2015-05-14.html>

70 Reuters, Appeals court upholds KPMG tax shelter convictions, <http://www.reuters.com/article/us-kpmg-tax-shelters/appeals-court-upholds-kpmg-tax-shelter-convictions-idINTRE67Q4KV20100827>

71 These were BLIPS products (Bond Linked Issue Premium Structure), which made it possible to create artificial debt for investors in order to avoid tax liability.

72 Committee on Governmental Affairs, United States Senate, S. Prt. 108–34, available at: <https://www.gpo.gov/fdsys/pkg/CPRT-108SPRT90655/pdf/CPRT-108SPRT90655.pdf>

73 US Department of Justice, press release, 17 October 2005, http://www.justice.gov/opa/pr/2005/October/05_tax_547.html (viewed on 11 July 2017)

74 Reuters, Appeals court upholds KPMG tax shelter convictions, <http://www.reuters.com/article/us-kpmg-tax-shelters/appeals-court-upholds-kpmg-tax-shelter-convictions-idINTRE67Q4KV20100827>

to submit to special monitoring measures until September 2008⁷⁵.

- In Europe, KPMG has in the same manner as PwC (see page 16) acquired secret tax deals for its clients from Luxembourg's tax authority that have been internationally criticised, in order for them to avoid payment of corporate taxes⁷⁶.
- The aggressive tax avoidance planned by KPMG in Britain has also been related to value-added taxes. In 2015, the UK's Supreme Court ruled that the tax arrangements planned by KPMG, which involved tax haven arrangement on the basis of which Pendragon Group had tried to avoid the payment of statutory value-added taxes, violated tax laws⁷⁷.
- In Canada, between 1999 and 2012, KPMG marketed Isle of Man-based dummy companies to its wealthy private clients, which could help them avoid millions of Canadian dollars in taxes⁷⁸. According to media sources, KPMG marketed shell corporations to its clients, who had at least 10 million Canadian dollars in assets. The clients were offered protection from creditors and the opportunity to acquire tax-free income. KPMG's charged its clients a 15 per cent share of the sum in taxes the clients would avoid paying to tax authorities.⁷⁹

75 Washington Post, Charge Against KPMG Dropped, <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/03/AR2007010301883.html> (viewed on 29 June 2017)

76 ICIJ, New Leaks Reveals Luxembourg Tax Deals for Disney, Koch Brothers Empire, <https://www.icij.org/project/luxembourg-leaks/new-leak-reveals-luxembourg-tax-deals-disney-koch-brothers-empire> (viewed on 29 June 2017)

77 The Supreme Court, Judgement, Commissioners for Her Majesty's Revenue and Customs (Appellant) v Pendragon plc and others (Respondents), available at: <https://www.supremecourt.uk/cases/docs/uksc-2013-0197-judgment.pdf>

78 CBC News, 2.3.2017, KPMG offshore tax dodge a 'façade' designed to hide money, ex-client says, <http://www.cbc.ca/news/business/kpmg-offshore-tax-dodge-1.4002778> (viewed on 29 June 2017)

79 KPMG, 9 September 2015, KPMG offshore 'sham' deceived tax authorities, CRA alleges, <http://www.cbc.ca/news/business/kpmg-offshore-sham-deceived-tax-authorities-cra-alleges-1.3209838> (viewed on 29 June 2017)

auditor, avoided 10 million euros in taxes by paying intra-group contributions to its owner corporations Ambea Holding, Ambea and Ambea AB.⁸⁰ Mehiläinen's tax planning can be considered aggressive, and the Finnish Tax Administration has intervened in this arrangement. The Tax Administration's Adjustment Board has also rejected the request for adjustment Mehiläinen submitted to the Tax Administration in this matter⁸¹. Mehiläinen has filed an appeal on this decision with the Administrative Court⁸². KPMG told Finnwatch that it cannot comment on matters concerning individual companies⁸³. The company did not comment on its possible involvement in the arrangements entered into by Mehiläinen when asked about it by YLE either⁸⁴.

According to KPMG Finland, its services do not include the planning of tax arrangements, and it only assesses the tax treatment of *commercial* arrangements. Finnwatch asked KPMG how it determined which arrangements were commercial and which were not. According to KPMG, arrangements "in which the legal form is not compatible with the arrangement's de facto nature are not commercial". The company reports that this refers to situations in which a company's de facto activities are not consistent with what has been formally decided or agreed on. Additionally, the actual operations must formally meet with what has been planned, meaning that the arrangements' formal implementation in the agreed upon manner is not in KPMG's view in itself sufficient for meeting with the prerequisites for commercial arrangements. The company did

80 Mehiläinen, Tilinpäätös 2016, pg. 69, available at: https://www.mehilainen.fi/sites/default/files/mehilainen_vuosikatsaus_ja_tilinpaaotos_2016.pdf

81 Ibid.

82 Yle, Mehiläinen kiisti "härskin verokikkailun" syksyllä 2011 – Oikeus pui nyt, oliko sittenkin verojen välttelyä, <https://yle.fi/uutiset/3-9820480> (viewed on 25 October 2017)

83 KPMG, Juha Säaskilahti, email 30 June 2017

84 57 Yle, Mehiläinen kiisti "härskin verokikkailun" syksyllä 2011 – Oikeus pui nyt, oliko sittenkin verojen välttelyä, <https://yle.fi/uutiset/3-9820480> (viewed on 25 October 2017)

not want to clarify its answer with concrete examples.⁸⁵

In its response to Finnwatch, KPMG said that in some rare cases the views of the Finnish Tax Administration or the Tax Recipients' Legal Services Unit (VOVA) have not been consistent with KPMG's assessments, and the Supreme Administrative Court has ruled that the arrangement constitutes tax evasion. As a result of this, client companies have had to pay the taxes that the arrangement aimed to avoid and possible tax increases and payments resulting from the delay.

It is Finnwatch's view that the KPMG Principles for a Responsible Tax Practice⁸⁶ do not go beyond statutory obligations. The Principles emphasise effective cooperation with tax authorities. According to the Principles, KPMG *may* discuss with clients the likely impact of any tax advice it gives on communities and stakeholders and any potential reputational risk where appropriate⁸⁷. Aggressive tax planning or refraining from it are not separately mentioned in the Principles. According to the Principles, KPMG gives recommendations to its clients if the interpretation of law is likely correct⁸⁸.

In the same way as PwC, KPMG Finland provides a tax footprint reporting instrument as a corporate responsibility service⁸⁹.

2.1.3 EY

Ernst & Young (EY) operates in 152 countries and employs more than 230,000 people. Its global organisation is the British Ernst

& Young Global Limited ("EY Global") of which Finnish company Ernst & Young Oy is a member⁹⁰. In Finland, EY is the third largest Big 4 company with an annual turnover of 113 million euros⁹¹. The company's tax and legal unit in Finland employs around 190 people. A total of more than 51,000 people work in the same types at units at EY worldwide.⁹²

The EY Global Code of Conduct does not contain guidelines for avoiding aggressive tax planning⁹³. EY Finland told Finnwatch that it applies quality standards on account of which the expert responsible for a commission is obligated to consult another expert, if the tax question at hand is subject to interpretation⁹⁴. EY also said that it has strict internal rules and principles for accepting clients.

In its response to Finnwatch, EY said that it was not aware of any instances over the past five years where a Finnish court had ruled that an arrangement planned by EY for a Finnish company constituted tax evasion.

Internationally, EY's member firms have planned, marketed and implemented aggressive tax avoidance arrangements for numerous international companies. Courts have ruled that some of these arrangements have constituted tax evasion (see examples on page 14).

2.1.4 DELOITTE

The international Deloitte network operates in 150 countries and employs more than 244,000 people worldwide. The membership community is Deloitte Touche Tohmatsu

85 KPMG, emails Hanna Höglund and Juha Säaskilahti, 12–17 October 2017

86 KPMG, Principles for a Responsible Tax Practice, <https://home.kpmg.com/xx/en/home/campaigns/2015/01/tax-transparency-morality.html> (viewed on 29 June 2017)

87 "Whenever relevant and practical to assess, we may discuss with clients any likely impact of any tax advice we give on relevant communities and stakeholders and any potential reputational risk."

88 "We shall make recommendations to clients only where we consider, at least on the balance of probabilities, that the relevant interpretation of law is correct."

89 KPMG, Tax Footprint, <https://home.kpmg.com/fi/fi/home/tietoa-kpmgsta/kpmg-yrityksena/vuosikertomus/verojalanjalki.html> (viewed on 11 July 2017)

90 EY Finland, Transparency Report 2016, available at: [http://www.ey.com/Publication/vwLUAssets/EY_-_L%C3%A4pin%C3%A4kyvyyksraportti_2016/\\$FILE/2016_TransparencyReport_Finland_FINAL.pdf](http://www.ey.com/Publication/vwLUAssets/EY_-_L%C3%A4pin%C3%A4kyvyyksraportti_2016/$FILE/2016_TransparencyReport_Finland_FINAL.pdf)

91 EY, financial period 1 July 2016–30 June 2017, EY in brief, <http://www.ey.com/fi/fi/newsroom/facts-and-figures> (viewed on 30 October 2017)

92 EY, email, 16 October 2017

93 The rules state that EY rejects unethical or illegal business practices. However, the rules do not specify what EY considers unethical. Ernst & Young, 2017, Global Code of Conduct, available at: [http://www.ey.com/Publication/vwLUAssets/Ernst-Young_Global_Code_of_Conduct/\\$FILE/EY_Code_of_Conduct.pdf](http://www.ey.com/Publication/vwLUAssets/Ernst-Young_Global_Code_of_Conduct/$FILE/EY_Code_of_Conduct.pdf)

94 EY, email, 16 October 2017

Limited (“Deloitte Global”), which is registered in Britain, and its Finnish member firm is Deloitte Finland⁹⁵. Deloitte Finland employs around 85 tax experts⁹⁶. Deloitte Finland is the smallest of Finland’s Big 4 firms with a turnover of approximately 60 million euros⁹⁷.

The Deloitte network has two global responsibility policies the DTTL Code of Ethics and Professional Conduct⁹⁸ and the Global Principles of Business Conduct⁹⁹, but neither of these contains a direct mention of tax responsibility. According to Deloitte Finland, Deloitte’s global steering of tax services is based on the idea of “responsible tax”.

Finnwatch asked Deloitte for the content and source of this definition, but Deloitte said that the concept has not been further defined. According to Deloitte, the term refers to “a culture where actors operate according to responsibly and ethically sustainable principles”¹⁰⁰. Deloitte said that it assesses the integrity of every potential client. Deloitte will only enter into and maintain client relationships with individuals and entities who are involved in legal activities. Deloitte can reject a client merely on the basis that the commission seems questionable. The company said that it has rejected new commissions a few times on the basis of internal guidelines.

Britain’s Deloitte has drawn up principles for tax advisers for its own use, according to which it does not provide very artificial tax arrangements for its clients. Pursuant to the principles tax planning must be given on the basis of commercial and economic content. According to Britain’s Deloitte, the company

advises clients in tax arrangements only when it is confident that the arrangement is in line with what Deloitte holds to be correct, and this view would also withstand interrogation in a court of law. Britain’s Deloitte also takes into account the impact of tax arrangements on its clients’ reputation¹⁰¹.

In its response to Finnwatch, Deloitte said that the tax authority had taken issue with some of the tax arrangements the company had planned and approved for its clients. According to Deloitte, its clients have experienced tax disputes in matters that are subject to interpretation. In these instances, the company says that the Tax Recipients’ Legal Services Unit has both lost and won cases which were submitted to administrative courts and the Supreme Administrative Court. In the cases that the Tax Recipients’ Legal Services Unit has won, client companies have had to pay the taxes that the arrangement aimed to avoid and possible tax increases and payments resulting from the delay of payments.

Deloitte Finland does not commit clearly in writing to the aforementioned tax responsibility principles drawn up by Britain’s Deloitte, although it referred to these in its response to Finnwatch. Deloitte emphasises that a significant portion of its work carried out in Finland and globally is compliance work, which is related to ensuring that its clients meet with statutory obligations.

Internationally, Deloitte has planned numerous aggressive tax arrangements, which have been found to be illegal by courts of law. Cases have been investigated especially in Europe (see pages 14–15).

95 Deloitte Finland’s website: <https://www2.deloitte.com/fi/en.html> (viewed on 3 July 2017)

96 Deloitte, Outi Ukkola, email 6 October 2017

97 Deloitte, Transparency Report 2017, <https://www2.deloitte.com/content/dam/Deloitte/fi/Documents/about-deloitte/Läpinäkyvyysraportti%202017.pdf>

98 Deloitte, Code of Ethics and Professional Conduct, available at: <https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/about-deloitte/sea-about-code-of-ethics.pdf>

99 Deloitte, Global Principles of Business Conduct, available at: <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-deloitte-global-principles-of-business-conduct-2016.pdf>

100 Deloitte, Outi Ukkola, email 4 July 2017

2.2 OTHER AUDITING AND CONSULTATION NETWORKS AND ACCOUNTING FIRMS

In addition to the Big 4, numerous smaller global and regional audit and consultation networks operate with the same international

101 Deloitte, Our tax advisory principles, available at: <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/tax/uk-tax-tax-advisory-principles.pdf>

business concept. Some of these also have a member firm in Finland (see table 1). In addition to international company networks, also accounting firms that operate nationally may provide tax services in addition to their staple financial administration services.

Tax authorities have also taken issue with tax arrangements that smaller international accounting firms have planned and provided assistance within numerous countries.

In 2012, the BDO network, which also operates in Finland, paid 50 million dollars in a settlement with the US federal prosecutor on tax fraud investigation that concerned tax products it sold between 1997 and 2003 that were considered tax evasion.¹⁰² In 2014, two of the company's former directors were sentenced for the arrangement to financial penalties and imprisonment¹⁰³. BDO Finland told Finnwatch that the company did not have any information on the Finnish Tax Administration taking issue with arrangements planned by BDO in Finland.

Nexia, an auditing firm owned by Finnish Authorised Public Accountants (APA), aims in its tax planning services to, for example, minimise the client's overall tax burden¹⁰⁴. Nexia which employs 30 people in Finland is part of the Nexia International network, and Nexia Finland says it offers its clients the international expertise and contacts of this network¹⁰⁵. Based on the Panama Papers, another Nexia International member firm Malta-based Nexia BT is suspected of having worked together with law firm Mossack Fonseca to help its clients evade taxes by planning invoicing arrangements that utilise

tax havens.¹⁰⁶ Nexia Finland did not respond to the Finnwatch survey at all.

Grant Thornton Finland employs 5–6 tax experts and it is a member of the Grant Thornton network which operates in 130 countries. Some of the clients of the network's US member firm have been subjected to monitoring and legal action due to tax arrangements planned by Grant Thornton that were deemed tax evasion¹⁰⁷. In 2016, Grant Thornton LLP was sentenced to pay nearly 100 million dollars in damages and fines for the marketing of an aggressive tax arrangement. According to the Kentucky Court of Appeals¹⁰⁸, Grant Thornton consciously concealed from the plaintiff its assessment that there was a 90 per cent probability that the tax authority would consider the use of the tax product marketed by Grant Thornton tax evasion¹⁰⁹. Grant Thornton Finland told Finnwatch that the tax authority had not taken issue with the arrangements it had planned and provided consultancy on in Finland.

Some auditing firms have focused their services on establishing tax haven companies. For example, on the front page of its website, the international Comistar network¹¹⁰, which also has an office in Finland¹¹¹, encourages potential clients to establish holding companies in Switzerland, because a holding company can among other things "own foreign companies and get dividends on

102 Forbes, 13 June 2012, BDO Admits Generating \$6.5 Billion In Phony Tax Shelter Losses, Pays \$50 Million, <https://www.forbes.com/sites/janetnovack/2012/06/13/bdo-admits-generating-6-5-billion-in-phony-tax-shelter-losses-pays-50-million/#29f7f8e656c4> (viewed on 3 July 2017)

103 Reuters, 10 June 2014, Two ex-BDO vice chairmen get prison for tax shelter scheme, <https://www.reuters.com/article/us-bdo-taxevsion-sentencing/two-ex-bdo-vice-chairmen-get-prison-for-tax-shelter-scheme-idUSKBN0EK20I20140609> (viewed on 31 October 2017)

104 Nexia Tilintarkastusyhteisö, Yritys, <http://www.nexia.fi/yritys> (viewed on 7 July 2017)

105 Nexia, Yritys, <http://www.nexia.fi/yritys> (viewed on 10 November 2017)

106 Times of Malta, Tax evasion probe to start on Panama Papers, 16 April 2016, <https://www.timesofmalta.com/articles/view/20160416/local/tax-evasion-probe-to-start-on-panama-papers.608952> (viewed on 7 July 2017)

107 Kansas City, Business Journal, 13 June 2014, Lawsuit: Grant Thornton knew about 'Dr. Poof', <https://www.bizjournals.com/kansascity/news/2014/06/13/lawsuit-grant-thornton-dr-poof-tax-fraud.html> (viewed on 7 July 2017); Kenny S. Thomas, et al vs. Grant Thornton LLP, <https://law.justia.com/cases/missouri/court-of-appeals/2015/wd78122.html>

108 Commonwealth of Kentucky, Court of Appeals

109 Yung et al. v. Grant Thornton LLP et al, 07-CI-2647, available at: <http://www.woodllp.com/Publications/Articles/pdf/Yung.pdf>; No. 2014-CA-001957-MR, <https://law.justia.com/cases/kentucky/court-of-appeals/2016/2014-ca-001957-mr.html>

110 According to the Comistar website, Comistar has member firms and employees in 20 countries and Affiliates in 30 countries.

111 Comistar, <http://comistar.com/fi/>

these, rent and licence trademarks and other IP rights, loan money, provide consultation and management services, etc". The transactions mentioned in the company's marketing materials are exactly the type that can be used as instruments for transferring profits to avoid taxes in the country of operation. The Comistar network did not respond at all to the survey sent by Finnwatch.

The Novasigma network operates with a similar business model to Comistar. Some of the Novasigma network's experts are Finnish. The company reports that it operates in 29 countries and its headquarters is in Gibraltar. Novasigma offers its clients a service through which to acquire a tax residency and assistance in establishing offshore companies for example in the Seychelles, which has a high level of privacy and low tax rates¹¹². As was the case with Comistar, Novasigma also did not respond to the Finnwatch survey.

Also, numerous other foreign companies and actors market offshore companies, meaning tax haven-based companies, to Finns; one such actor is tax-optimization.eu, which is connected to Latvian company Global Synergy Group. The website lists the phone number for the company's Finnish representative¹¹³. The company says that it establishes offshore companies for its clients in numerous jurisdictions. It already has these offshore companies, and the client can adopt use of these within 24 hours. In its marketing materials, the company promises its clients tax savings as well as anonymity and protection from the legal system¹¹⁴. As with many other companies that openly market tax avoidance mechanisms, Global Synergy Group did not respond to any of Finnwatch's attempts to contact the company.

Not one consultancy network or accounting company had a clear policy for tax

112 The company reports that the OECD and individual countries continuously pressure the Seychelles in an attempt to get the country to break down its high level of privacy protection so that they can collect taxes from countries registered in the tax-less country or foreign private persons who reside on the country. <http://novasigma.fi/seychelles/>

113 Global Synergy Group, <http://tax-optimization.eu/fi>

114 "Preserve your wealth in a jurisdiction where judgement of world wide courts are not recognized".

responsibility. For example, BDO said that it complies with the generally accepted ethical rules and instructions for the audit sector¹¹⁵.

Suomen Tilintarkastajat ry¹¹⁶ is an association that represents the interests of auditors, and auditing firms must comply with good auditing practices in all their operations. This includes complying with the IFAC's (International Federation of Accountants) International Code of Ethics for Professional Accountants. However, this code of ethics only applies to accounting and auditing and does not contain responsibility policies for tax services.¹¹⁷

In their responses, the companies also referred to the ethical guidelines drawn up by organisations representing the interests of the sector. One of these organisations is Suomen veroasiantuntijat ry, which was established in 2001 to represent the interests of tax consultants. The association is a member of CFE Tax Advisers Europe (C.F.E.)¹¹⁸.

Finland's tax experts' association Veroasiantuntijat ry has drawn up ethical guidelines¹¹⁹ for tax consultants although according to these guidelines, being ethical does not exceed existing statutory obligations: the guidelines state that "advice and instructions related to tax consultancy must be practical, reliable and in accordance with existing laws and provisions". The guidelines do not contain concrete commitments related to corporate responsibility: according

115 BDO Oy, Marja Hokkanen, email 3 June 2017

116 Suomen tilintarkastajat website: <https://www.suomentilintarkastajat.fi/>

117 However, it should be noted that mandating legislation on the range of services provided by auditing firms and tax consultants has recently been made more stringent with the enactment of EU Directive 2014/56/EU amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and the EU Regulation on specific requirements regarding statutory audit of public-interest entities (EU N:o 537/2014). The new Auditing Regulation includes a list of so-called prohibited non-audit services that entities of significant public interest cannot purchase from their auditor. Consultation has been limited to some extent in this context.

118 Confédération Fiscale Européenne, more information at: <http://www.cfe-eutax.org/frontpage>

119 Suomen veroasiantuntijat ry, Suomen veroasiantuntijat ry's ethical guidelines for tax consultants, <http://veroasiantuntijat.fi/saannot/eettiset-ohjeet/> (viewed on 16 June 2017)

to the guidelines, members have committed to being truthful and fair. However, the content of fairness is not defined in more detail. The guidelines have no mention of aggressive tax planning or refraining from it at all.

The following entities did not respond to Finnwatch's survey at all: Talenom, Norlic, Nexia, Aallon Tilitoimisto, TietoAkseli (UHY International network), BTF Finland, Moore Stephens Rewinet, Suomen Tilintarkastajaverkko, Comistar Helsinki, Novasigma, Global Synergy Group, Adekva Tilintarkastus, Veropalvelu Sofia, Digital Audit Company, SYS Audit, Tilintarkastustoimisto Reviisori and Suomen Talousverkko.

Additionally, AST-Accounting Services Tilimatic and Accountor Helsinki and Soinio & Co stated that they did not provide tax consultancy services at all or that they very rarely provided it, and for this reason the companies did not feel that the Finnwatch survey was relevant for them.

2.3 LAW FIRMS AND ATTORNEYS' OFFICES SPECIALISED IN BUSINESS LAW

Numerous law firms and attorneys' offices specialised in business law that provide taxation and tax arrangement-related legal services in addition to their other services operate in Finland. In principle large law firms compete in the same market as large accounting firms, but they often operate in cooperation with one another¹²⁰.

The clients of Finnish law firms include both small and medium-sized companies as well as wealthy private persons, but also large international publicly listed companies depending on the law firm in question. Tax services are provided to companies as part of the law firms' comprehensive range of services, but also as individual commissions.

¹²⁰ For example, international law firm Bird & Bird, which also operates in Finland started in the resolution of international tax disputes in Great Britain by working in cooperation with PwC. Bird & Bird, Bird & Bird establishes international tax disputes practice with appointment of two partners and team from PwC, <https://www.twobirds.com/en/news/press-releases/2017/uk/bird-and-bird-establishes-international-tax-disputes-practice> (viewed 5 July 2017)

Law firms also provide active tax planning for their clients. The context for this is often an international acquisition that includes for example taxation questions related to the sale and centralisation of intellectual property or financial arrangements related to becoming listed. On the other hand, law firms do not usually handle taxation-linked compliance services such as tax returns on behalf of their clients. These services are provided by accounting companies and other service providers whose operations are focused on taxation.

Some law firms that operate in Finland, such as Finland's largest law firm Roschier¹²¹, also have offices in other Nordic countries, and in Russia as is the case with law firm Hannes Snellman¹²². Their regional expertise helps them secure international companies with operations on Finland's neighbouring as their clients.

Law firms DLA Piper Finland Oy, Eversheds, White & Case and Bird & Bird all belong to international law firm networks that operate in numerous countries and can provide legal services globally. Additionally, some of Finland's largest law firms are members of global cooperation networks for law firms¹²³.

Established in 1911, Borenius is one of Finland's oldest law firms specialised in taxation and employs eleven full-time attorneys specialised in taxation. According to the Borenius website, the clients for its tax services include equity funds, institutional investors, banks, international companies and family-owned businesses, associations, authorities and private persons¹²⁴. Borenius is a member of the world's largest independent tax organisation Taxand, which has more than 400 tax partners and over 2,000 tax advisors in 48 countries.¹²⁵

¹²¹ Law firm Roschier's website: <https://www.roschier.com/> (viewed on 22 June 2017)

¹²² Hannes Snellman Attorneys Ltd website: <https://www.hannessnellman.com/> (viewed on 6 July 2017)

¹²³ E.g. Lexia Attorneys Ltd is a member of the Meritas Law Firms Worldwide cooperation network.

¹²⁴ Borenius, Tax, <http://www.borenius.com/services/tax/> (viewed on 1 December 2017)

¹²⁵ Taxand, About us, <https://www.taxand.com/about-us/> (viewed on 22 June 2017)

Finnish attorneys in Panama

The Panama Papers meaning law firm Mossack Fonseca's leaked documents (see also page 36) reveal that also some individual Finnish lawyers have intermediated for their clients in the establishment of shell companies. The data leaks revealed that companies based in tax havens have been established and managed through Mossack Fonseca from the 1990s at least until 2015¹²⁶. The editorial team of Finnish public service broadcasting company Yle's MOT programme who have examined the documents named three of these lawyers. According to MOT, the operations involved some discrepancies and indications that assets were hidden from tax authorities.¹²⁷

According to the Panama Papers, large Finnish law firms such as Castrén & Snellman¹²⁸ have been Mossack Fonseca's clients prior to the 2000s.

Borenus is an active participant in public discussion, and has criticised, for example, the Finnish Tax Administration's and the Supreme Administrative Court's rulings in tax evasion matters¹²⁹. According to media sources, Borenus has represented parties who have actively expressed repentance for hiding their assets in tax havens in their requests for correction concerning taxation. The company is also said to have lobbied the Tax Administration and political decision makers in favour of a law for effective repentance.¹³⁰

126 According to MOT, Mossack Fonseca is not generally in direct contact with the real owners of companies established in tax havens, but that all business is carried out through intermediate service providers. Yle, MOT, 29 April 2016, Suomalaisia välikäsinä veroparatiisityhtiöiden pyörittämisessä, <https://yle.fi/aihe/artikkeli/2016/04/29/suomalaisia-valikasinaveroparatiisityhtioiden-pyorittamisessa> (viewed on 5 July 2017)

127 MOT named lawyers Sami Saarinen, Keijo Ahtiainen and Esa Vuorenpää as Mossack Fonseca's active Finnish clients and as the intermediary service providers, who managed tax haven-based companies.

128 Ibid.

129 Kauppalehti, Verosuunnittelun ja veronkierron raja himmenee, <https://www.kauppalehti.fi/uutiset/verosuunnittelun-ja-veronkierron-rajahimmenee/EHr-22bf8> (viewed on 22 November 2017); Kauppalehti, Elinkeinoelämä vaatii suitsia verottajalle, <https://www.kauppalehti.fi/uutiset/elinkeinoelama-vaatii-suitsia-verottajalle/s8fwHnat>

130 Suomen Kuvalehti, Armahduksia varakkaille: Verohal-

A law on effective remorse, would have allowed parties to be pardoned for tax crimes by reporting their hidden income themselves and by paying a lower than normal increase in taxes.

Borenus did not respond to Finnwatch's survey.

Itäinen & Ojantakanen Attorneys Ltd said that it does not provide tax planning services in the scope described in the Finnwatch survey and for this reason felt the company was unable to respond to the survey. The majority of other law firms did not respond at all to the survey sent by Finnwatch concerning tax services, despite numerous attempts to establish contact. The following companies did not respond to the survey: Roschier, Castrén & Snellman, Krogerus¹³¹, Borenus, Eversheds, Dittmar & Indrenius, Avance, White & Case, Merilampi, DLA Piper Finland, Sivenius, Suvanto & Co, Waselius & Wist, Mäkitalo Rantanen & Co, Magnusson, Lukander Ruohola HTO, Procopé & Hornborg, Astrea, Susiluoto, Reims & Co, Liuksiala & Co, Suomen Hankintajuristit, Kalliolaw, Kotka & Co, Facta, Fenno, Kontturi & Co, Applex, Hedman Partners, Lindblad & Co, Brander & Manner, Mitts & Co, Alfa, Ava and Juridicus.

The companies did not give any reasons for not responding to the survey, which means we can only hazard a guess at what their motives are. The survey was only sent to companies that implied in their published marketing materials that they provided consultancy services related to taxation. Even with the advance selection, some of the companies may not provide extensive tax planning and for this reason felt the survey did not apply to them. Others did not perhaps want to publish information in the survey that contained details on such things as whether the tax authority had taken issue with the tax arrangements that the company had planned and provided advice on. It can be generally

linto on jo vuosia jakanut syytesuojaa Sveitsiin rahojaan piilottaneille, <https://suomenkuvalehti.fi/jutut/kotimaa/armahduksia-varakkaille-verohallinto-jo-vuosia-jakanut-syytesuojaa-sveitsiin-rahojaanpiilottaneille/?shared=994537-f52b4a23-4> (viewed on 21 November 2017)

131 However, Krogerus met with Finnwatch's researcher for background discussions for this report.

stated in the light of this report that the corporate responsibility of companies that provide tax planning services seems undeveloped and the actors are not accustomed to holding discussions on the social dimensions of their services.

None of the law firms and attorneys' offices that responded to the Finnwatch survey had a corporate responsibility policy in place that applied to tax planning. Finnwatch was also unable to find responsibility policies on the websites of those companies that did not respond to the survey. Generally, law firms only refer to the Finnish Bar Association's Code of Conduct for Attorneys-at-Law¹³², which do not cover tax responsibility. According to the code, attorneys-at-law must promote good and efficient administration of justice and must in the scope of their work as an attorney avoid all dealings that might diminish the value of attorneys in general and reduce public trust in them. According to the Finnish Bar Association's Code of Conduct for Attorneys-at-Law, an attorney must aim to develop society in a manner that promotes justice¹³³. However, the Finnish Bar Association has not separately specified that aggressive tax planning could reduce public trust in attorneys in general.

The Bar Association has not been active in the prevention of aggressive tax planning in public. In an interview with current affairs television programme MOT, the chairman of the Bar Association was ready to condemn any assistance provided for illegal tax fraud¹³⁴.

Instead of promoting responsible tax planning, attorneys' offices emphasise the legal protection of clients' rights and the

confidential relationship between attorneys and their clients, for which reason law firms are not willing to open their client lists to e.g. the Finnish Tax Administration, to be used as the basis for risk assessments in tax control. In 2016, Finland's Supreme Administrative Court heard a case where a law firm that provided tax consultancy was not required to submit the tax memos it had drawn up for its clients to the Finnish Tax Administration in connection to a tax audit. One of the grounds cited in this case was attorney client privilege.¹³⁵

Some of the tax experts at law firms also refer to the ethical code of conduct for tax consultants¹³⁶ drawn up by tax expert association Veroasiantuntijat ry, in which, however, ethics do not surpass statutory obligations (see page 20).

2.4 OTHER EXPERT COMPANIES AND ACTORS WITH A FOCUS ON TAXATION

In addition to auditing and consultancy networks, accounting offices, law firms and attorneys' offices, other actors that operate in Finland's tax service markets include domestic companies whose services centre on tax services. These companies vary in size and the educational background of their experts is mixed.

Verona (previously Veropaja) is a Finnish company that employs 30 people¹³⁷. Verona's most common client base is made up of owner-driven companies as well as wealthy private persons and their families. Their services include taxation and the legal services that support it, ownership arrangements as well as wealth management. Corporate clients are provided e.g. planning of the effective tax rate for their Group. The company's financial management services include insurance instruments the company has

132 The Code of Conduct applies to attorneys and the members of the Finnish Bar Association. Code of Conduct for Attorneys-at-Law, available at: https://www.asianajaliitto.fi/files/1660/B_01_Hyvaa_asianajatapaa_koskevat_ohjeet_tammikuu_2013.pdf

133 The purpose of the code of conduct is to generally define good legal practice that all people working as lawyers are obligated to abide by. The code of conduct does not formally bind lawyers. https://www.asianajaliitto.fi/files/856/B_19.3_Lakimiehen_eettiset_ohjeet.pdf

134 Yle MOT, Suomalaisia välikäsinä veroparatiisiyhtiöiden pyörittämisessä <https://yle.fi/aihe/artikkeli/2016/04/29/suomalaisia-valikasina-veroparatiisiyhtioiden-pyorittamisessa> (viewed on 31 October 2017)

135 KHO:2016:127, available at: <http://www.kho.fi/index/paatoksia/vuosikirjapaatokset/vuosikirjapaatos/1472124006066.html>

136 Suomen veroasiantuntijat ry, Suomen veroasiantuntijat ry:n eettiset ohjeet verokonsulteille, <http://veroasiantuntijat.fi/saannot/eettiset-ohjeet/> (viitattu 16.6.2017)

137 Verona, Working at Verona, <http://www.verona.fi/toissa-veronalla/> (viewed on 5 July 2017)

Table 1. Summary of company responses to Finnwatch query

Company	Number of full-time employees whose primary task is to provide tax services	International partners	Typical customers: (a) large international companies, (b) small and medium-sized companies, (c) banks, credit and financial entities, (d) institutional investors, (e) equity funds, other funds and fund management companies, (f) other communities, (g) private persons	Tax services: a) assistance with active tax planning, b) assessment of tax impacts and legality, c) dispute resolution	Corporate tax services: a) tax planning related to mergers and reorganisations including structuring and funding arrangements for property and intellectual property, b) tax planning that is unrelated to restructuring, c) transfer pricing, d) tax services related to equity funds, other funds and financial instruments, e) other possible services	Most common types of conflicts in corporate tax dispute resolution as per the company (if the company provides dispute resolution services)
Audit and tax consultancy companies						
PwC Finland	130	Firms that are members of the PwC network	a, b, c, d, e, f (State, municipalities, other public sector actors as well as foundations and associations), g	a, b, c	a, b, c, d, e (e.g. consultation concerning value-added taxes)	Disputes related to transfer pricing that are due to differences in interpretation by tax authorities from different countries. Also in relation to value-added taxes tax authorities have in the same way, according to PwC, aggressively challenged the nature of the parent companies of various groups by claiming that parent companies sell financial services that fall outside the scope of value-added taxes and by applying more strict interpretations of what is non-taxable and taxable business.
KPMG Oy Ab i.e. KPMG Finland	Approximately 200	Firms that are members of the KPMG network (Klynveld Peat Marwick Goerdeler)	a, b, c, d, e, f, g (private persons are only exceptionally customers)	b, c	a, b, c, d, e (e.g. applications for the refund of withholding taxes, compliance services)	Over the past years, conflicts have been due to the deviating interpretations of rules and guidelines concerning transfer pricing, especially in situations where there are no clear rules. Conflicts can also be due to the different ways in which countries interpret, for example the OECD's guidelines. Generally, conflicts in tax matters arise because the situation involves the interpretation of legislation for which there are no clear rules or guidelines or they arise because the Finnish Tax Administration has altered its previous line for interpretation.
Deloitte Ltd.	Approximately 85	Firms that are members of the Deloitte network	a, b, c	a, b, c	a, b, c, d, e (e.g. compliance services)	The greatest conflicts are related to transfer pricing. New methods for engaging in business activities, new channels (e.g. digitalisation) will make the interpretation of tax provisions challenging.

Cooperation with the tax authority: does the company hold provisional discussions with the tax authority, does it request advance rulings?	Has the tax authority intervened in the arrangements the company has planned and approved (or assisted with)?	Does the company have a written policy for tax responsibility? Assessment of the tax responsibility policy
Yes and yes. PwC would like to see more opportunities for dialogue with the Finnish Tax Administration instead of just formal advance rulings.	Authorities have challenged the tax solutions of some of PwC's clients in cases where PwC has provided advise to clients when they drew up the solutions. According to the company, in the majority of these cases the court found that the tax authority's view to be incorrect.	Yes. Finnwatch believes that PwC's Global Tax Code of Conduct does not contain guidelines on tax that go beyond what is stated in existing statutory obligations.
Yes and yes. KPMG also supports the development of in-depth client cooperation by the Corporate Taxation Unit.	KPMG's services do not include the planning of tax arrangements. KPMG only assesses the tax treatment of commercial arrangements. There are situations in which the views of the Finnish Tax Administration or the Tax Recipients' Legal Services Unit have not been consistent with KPMG's assessments and the Supreme Administrative Court has found the arrangement to be tax evasion. In many other instances the court has not agreed with the tax authority's views and has agreed with KPMG's interpretation.	Yes. Finnwatch feels that KPMG's global Principles for a Responsible Tax Practice do not contain guidelines on tax that go beyond what is stated in existing statutory obligations. Additionally, KPMG states that it only assesses the tax treatment of commercial arrangements. According to the company, arrangements in which the legal form is not compatible with the arrangement's de facto nature are not commercial. The company reports that this refers to situations in which a company's de facto activities are not consistent with what has been formally decided or agreed on.
Yes and yes	Deloitte's clients have experienced tax disputes in matters that are open for interpretation. In these instances, the Tax Recipients' Legal Services Unit has both lost and won cases which were submitted to administrative courts and the Supreme Administrative Court.	Yes. It is Finnwatch's view that Deloitte's DT- TL Code of Ethics and Professional Conduct (Global Office Code) and Global Principles of Business Conduct (Global Code) do not contain guidelines on tax that go beyond what is stated in existing statutory obligations.

Company	Number of full-time employees whose primary task is to provide tax services	International partners	Typical customers: (a) large international companies, (b) small and medium-sized companies, (c) banks, credit and financial entities, (d) institutional investors, (e) equity funds, other funds and fund management companies, (f) other communities, (g) private persons	Tax services: a) assistance with active tax planning, b) assessment of tax impacts and legality, c) dispute resolution	Corporate tax services: a) tax planning related to mergers and reorganisations including structuring and funding arrangements for property and intellectual property, b) tax planning that is unrelated to restructuring, c) transfer pricing, d) tax services related to equity funds, other funds and financial instruments, e) other possible services	Most common types of conflicts in corporate tax dispute resolution as per the company (if the company provides dispute resolution services)
Ernst & Young Oy (EY)	Approximately 190 people in Finland, 51,000 people worldwide	Firms that are members of the EY network	a, b, c, d, e, f, g	a, b, c	a, b, c, d, e (e.g. compliance services)	<p>The most common tax disputes are related to business and the different conclusions drawn by the tax authorities of two different countries on the right to tax and the division of the taxable income between the two countries in question. These questions are related in particular to the following situations:</p> <p>1) Classification conflicts – The income’s country of source collects a withholding tax from payments made to a Finnish company and the Finnish Government considers this a violation of the tax treaty between the two countries. In this case, the Finnish State will not compensate the company for the withholding tax collected by the country of source and will nevertheless collect full taxes on the income of the Finnish company. In these situations, the company’s income is double taxed, which fundamentally weakens the company’s competitiveness.</p> <p>2) Transfer pricing – The views of tax authorities from two or more countries on the margin that belongs to the Group Company included in the value chain often leads to situations in which a tax is paid more than once on the same income. Problems arise most often because the country of source for income and Finland’s Ministry of Finance cannot reach an agreement on the correct interpretation of a mutual tax treaty in the MAP procedure. Cases of transfer pricing are often due to differing views, which are based in part on fiscal views and where every country wants a larger piece of the same cake.</p>
Azets Insight Oy	No one as their primary task.	The group’s parent company and subsidiaries	b		e (compliance services)	Does not provide services related to tax disputes.
			b) to some extent, the company primarily provides accounting services and services related to the filing of VAT and taxes. The company only provides guidance in tax and company form-related matters to its clients who are owners or entrepreneurs in small businesses.			
Rantalainen Audit and Accounting Services	25	Geneva Group International (GGI)	b, f (housing companies), g	a, b	a, b, c	Financial transfers between an entrepreneur and company, matters related to tax deductions and value-added taxes
BDO Finland	7	Part of the international BDO network, which operates in 158 countries.	a, b, f, g	b, c	a, b, c, d (advance rulings)	Reorganisation and related-party transactions
Administer Oy	No one as their primary task.	A member of the Integra International network.	b	b	a, b	Does not provide services related to tax disputes.
Tuokko	4	Part of the international Praxity network, which operates in 103 countries.	b	a, b, c	a, b	There are numerous situations in which conflicts arise such as questions related to source of income, tax exemptions for fixed asset shares. Situations in which problems arise are often due to problems in interpreting legislation, and sometimes these are due to poor planning and documentation.

Cooperation with the tax authority: does the company hold provisional discussions with the tax authority, does it request advance rulings?	Has the tax authority intervened in the arrangements the company has planned and approved (or assisted with)?	Does the company have a written policy for tax responsibility? Assessment of the tax responsibility policy
Yes and yes	EY is not aware of any instances over the past five years where a court has ruled that an arrangement it has planned has been tax evasion.	Yes. Finnwatch believes that EY's Code of Conduct does not contain guidelines on tax that go beyond what is stated in existing statutory obligations. EY also said that it applies quality standards on account of which the expert responsible for the commission is obligated to consult another expert, if the tax question at hand is subject to interpretation.
The company was previously on the Finnish Tax Administration customer panel for accounting companies, and at that time it held regular talks with the tax authority on taxes. Advance rulings are mostly sought for the use of confirmed losses. Other advance ruling applications for clients are generally drawn up by audit companies.	No	No, it does not
Yes	No	No, it does not
Yes and yes	The firm is not aware of any instances in which the Finnish Tax Administration would have taken issue with the arrangements BDO has planned.	According to BDO, its internal tax manual steers the tax consultation it provides and the company is not involved in aggressive tax planning. However, the manual is not available to the public and the company has not provided Finnwatch with more detailed information on the content of the manual.
Applies for advance rulings, but predominantly handles this through its partners that are law firms.	Does not plan tax arrangements for clients.	No, it does not
Yes, it applies for advance rulings.	According to the company, the tax authority has only rarely taken issue with the tax arrangements planned by the company.	No, it does not

Company	Number of full-time employees whose primary task is to provide tax services	International partners	Typical customers: (a) large international companies, (b) small and medium-sized companies, (c) banks, credit and financial entities, (d) institutional investors, (e) equity funds, other funds and fund management companies, (f) other communities, (g) private persons	Tax services: a) assistance with active tax planning, b) assessment of tax impacts and legality, c) dispute resolution	Corporate tax services: a) tax planning related to mergers and reorganisations including structuring and funding arrangements for property and intellectual property, b) tax planning that is unrelated to restructuring, c) transfer pricing, d) tax services related to equity funds, other funds and financial instruments, e) other possible services	Most common types of conflicts in corporate tax dispute resolution as per the company (if the company provides dispute resolution services)
RSM Finland Oy	2	Part of the RSM International network, which operates in 130 countries.	b, c, f (small entrepreneurs and branches and physical offices in Finland of international small and medium-sized companies), g	a, b, c	a, b, c, d	Most typically, conflicts are related to the distribution of source of income for small entrepreneurs, the use of group contributions, the interest rate of funding that an owner gives their company, as well as dividends based on work contribution (commissions carried out as an entrepreneur have been seen as salary instead of company income).
Grant Thornton Finland Oy	5-6	Firms that are members of the Grant Thornton network	a, b, g	a, b, c	a, d (e.g. guidance related to the application of taxation for dividend distribution and value-added taxes)	Disputes are due in the most part to differing interpretations with the Finnish Tax Administration. In some cases, documentation may have been lacking, as a result of which the actual situation has been difficult to demonstrate to the Finnish Tax Administration.
TW-Laskentapalvelut Oy	1	A member of the Russell Bedford International network.	b, g	b, c	a, b, c (in part), d (only with regard to those subject to Finnish taxation)	
<p>Problems arise when entrepreneurs/the people in charge of financial matters at companies have not consulted tax experts before they have proceeded with taxation-related actions that are subject to interpretation. There are also actors in the sector who provide</p>				<p>tax consultancy even though they do not have the needed know-how and skills. These cases then employ experts who must deal with issues.</p>		
Turun Tili-keskus-Yhtiöt Oy	2	No partners named. Where necessary, the company works in cooperation with the Big 4 in international commissions.	b, e	a, b, c	a, b, d	The most common disputes with the Finnish Tax Administration are related to the division of source of income in the case of investment companies. There have also been some disputes related to the valuation of companies.
Tilitoimisto Päättili Oy	1	No, it does not	b, g	b	b	Does not provide services related to tax disputes.

Attorneys

Hannes Snellman Attorneys Ltd	Approximately 8	Typically, the largest law firms in various countries.	a-g, but most commonly a-e	All, but most commonly b and c	Most commonly a, but also e.g. b and d	There are some conflicts like these. In these cases, problems have often been avoided by applying for an advance ruling. It is not always possible to get an advance ruling.
HPP Attorneys Ltd	4	Uses the assistance of foreign law firms in cross-border cases.	a, b, d, e, f (start-up companies)	a, b, c	a, b, d, e (e.g. matters related to value-added tax, prepayment of taxes and customs legislation)	In most cases, this is a matter of the deviating interpretation of tax legislation or that the understanding of the company's business operations is lacking.

Cooperation with the tax authority: does the company hold provisional discussions with the tax authority, does it request advance rulings?	Has the tax authority intervened in the arrangements the company has planned and approved (or assisted with)?	Does the company have a written policy for tax responsibility? Assessment of the tax responsibility policy
Yes and yes – also freeform provisional reports	No	No, it does not. According to the company, its standard terms do require that clients commit to complying with existing laws and that they do not have hidden motivations for tax avoidance.
Yes, it applies for advance rulings. An effort is made to be in contact with the Finnish Tax Administration in matters concerning the current practices for interpretation and current issues.	No	No it does not, but it is currently in the process of drawing up guidelines.
Applies for advance rulings from the tax authority in tax matters that are subject to interpretation. In most cases these are related to reorganisation and generational changes.	No	No, it does not
Engages in active talks with the Finnish Tax Administration on their interpretations. Advance rulings have also been applied for in complicated arrangements, financially significant situations or in situations in which the client wants peace of mind.	There have been instances in which the company's interpretation has differed from that of the Finnish Tax Administration or the Tax Recipients' Legal Services Unit. According to the company, it has won the contested cases in the courts and the arrangements have not been considered tax evasion.	No, it does not
Sometimes	No	No, it does not
Yes and yes	No	No, it does not
Yes and yes	The Tax Recipients' Legal Services Unit has filed complaints on individual cases in which the company has been involved. The arrangements were not found to constitute tax evasion.	No, it does not

Company	Number of full-time employees whose primary task is to provide tax services	International partners	Typical customers: (a) large international companies, (b) small and medium-sized companies, (c) banks, credit and financial entities, (d) institutional investors, (e) equity funds, other funds and fund management companies, (f) other communities, (g) private persons	Tax services: a) assistance with active tax planning, b) assessment of tax impacts and legality, c) dispute resolution	Corporate tax services: a) tax planning related to mergers and reorganisations including structuring and funding arrangements for property and intellectual property, b) tax planning that is unrelated to restructuring, c) transfer pricing, d) tax services related to equity funds, other funds and financial instruments, e) other possible services	Most common types of conflicts in corporate tax dispute resolution as per the company (if the company provides dispute resolution services)
Asianajotoimitus Bird & Bird Oy, which is part of international corporation Bird & Bird LLB (GB)	3	Bird & Bird's other offices	As a general rule all of these, but the company's largest client groups are a, b, e and g.	a, b, c	a, b, c, d, e (compliance services)	Disputes can be related to e.g. the acceptability of the business reasons for reorganisation or value questions. This may also be a case of a new business model's tax treatment, as well as different situations concerning the determination of the line between a salary and remuneration.
Hästö & Co	1	Is a member of various organisations that operate worldwide of which the most important is Mackrell International.	b, g	b, c	a, b, d (d is related in particular to the planning of tax and other matters related to inheritance)	Lacking contracts, lacking verification and often also a misunderstanding on the nature of the procedure.
Law Offices Lukkari Lyytinen Helminen Ltd	No one as their primary task.	No, it does not	b	b	a	Does not provide services related to tax disputes.
Aura Attorneys at Law Ltd.	No one as their primary task. Tax services are often related to more extensive commissions.	No, it does not. Only the Finnish offices of the large accounting firms.	b	b, c	a + e (e.g. generational changes)	Clients are usually organisations, also the owners and directors of small and medium-sized companies. Cases often revolve around the solutions these parties have made without consultation and on which they and the tax authority then have differing views.
Taxpoint Attorneys Ltd.	2	The company rarely has any foreign partners, primarily independent tax consultants.	a, b, c	Most commonly b and c, a (only in very limited cases)	a, b	The most common reason for tax disputes is tax audits in which tax inspectors did not in the opinion of the company in question know how to determine facts.
Lexia Attorneys Ltd	2	A member of the Meritas Law Firms Worldwide alliance. Also a member of TELFA, the Trans European Law Firms Alliance.	b	b, c	a, b	As a general rule, case-by-case interpretations and demarcation that apply to corporate taxation.
Law firms and other companies that provide tax consultancy						
Alder & Sound Ltd.	No answer	No answer	No answer	No answer	No answer	No answer
Tax Health (JSP Health Oy)	1	No	a, g	b, c	c, e (tax audits and appeals of private persons)	There have been differing opinions on where the line should be drawn between general and limited tax liability for private persons.

Cooperation with the tax authority: does the company hold provisional discussions with the tax authority, does it request advance rulings?	Has the tax authority intervened in the arrangements the company has planned and approved (or assisted with)?	Does the company have a written policy for tax responsibility? Assessment of the tax responsibility policy
Yes and yes	In some cases there are situations in which the Finnish Tax Administration and the Tax Recipients' Legal Services Unit disagree. In some rare cases a plan has been determined to be tax evasion.	No, it does not. It is very rare for the company to reject a commission for reasons related to corporate social responsibility, but there have been a few instances where this has happened.
Yes, applies for advance rulings in arrangements for generational changes and holds provisional talks	No	No, it does not
Yes and yes	No	No, it does not
Holds talks quite rarely, applies for advance rulings relatively often.	No	No, it does not
Rarely if ever uses provisional talks, often seeks advance rulings.	No. One partnership scheme was interpreted as tax evasion, but when the company applied for a new advance ruling on the matter, the ruling was in the company's favour, according to them.	No, it does not
Yes and yes	No	No, it does not
No answer	No answer	No, it does not
Yes	No	No, it does not



Establish a company in Estonia

A special characteristic of the Finnish market is the small Estonian companies that provide Finns with services in the establishing companies in Estonia and tax services, which attract customers with their Finnish-language websites.

Moving business operations from Finland to Estonia has experienced strong growth – around 30,000 companies the management of which have ties to Finland now operate in Estonia. The reasons for Estonia's popularity are presented in marketing materials with Estonia's proximity to Finland or being more flexible than Finland and a more enterprise-friendly operating environment.

However, according to the Finnish Tax Administration, moves to Estonia may be due to aggressive tax planning and even the grey economy. Parties who are subject to pay taxes in Finland can avoid tax by transferring income to a company the party has established in Estonia. The reporting requirements for Estonian companies, which are only subject to limited taxes, are not as stringent as for Finnish companies, for which reason also tax supervision for foreign companies is more difficult than for domestic companies. This facilitates the use of foreign companies in tax fraud. However, income can be taxed in Finland, if the company forms a permanent establishment in Finland. However, this can only be created on the basis of busi-

Company ABC OÜ¹³⁸ is an example of one of the companies that market Estonian companies to Finns. The company provides ready-made shelf companies that have their own share capital and are immediately ready for business and financial activities. The client is charged a few hundred euros for an Estonia-based off-the-shelf company or a for the establishment of a new company. The established company in question can be for example an Estonian private limited company (OÜ) or public limited company (AS). Additionally, these companies help their clients in organising their business, provide accounting services and built websites for companies.

ness income, meaning that a holding company that receives interest and royalty payments and other capital that is passive in nature does not form such an entity.¹³⁹

Some of the companies that establish Estonian companies state on their websites that a company established in Estonia may be liable to pay tax in Finland. For this reason, the companies provide expert help with taxation questions related to permanent establishments and in reporting that must be filed in Finland.¹⁴⁰

¹³⁸ Company ABC OÜ, Yritys Viroon, <http://www.yritysviroon.com/> (viewed on 7 June 2017)

¹³⁹ Finnish Tax Administration, 2014, Suomalaisten yrityskennät Viroon, https://www.vero.fi/download/Asiantuntijakirjoitus_2_2014/%7B0343641C-C2D1-4526-9E32-54FA8C8AA765%7D/9177 (viewed on 7 June 2017)

¹⁴⁰ See e.g. Koivuaho Tax Consulting, <http://www.koivuaho.fi/yritys-viroon/> (viewed on 7 June 2017)

developed with its partners (see more on tax benefits-based insurance products on page 30).¹⁴¹ Verona declined to respond to the Finnwatch survey. The company said that it does not want to take a stance on social and political questions and will only answer requests for information by authorities¹⁴².

Alder & Sound is another Finnish company that provides taxation, legal and financial consultation services for international and domestic companies. The company only responded to a small part of the Finnwatch survey (see table 1).

Fiscales Ltd in turn employs 11 experts who provide various services for the optimisation of a company's and its owners' taxes as well as insurance instruments based on tax benefits¹⁴³. Fiscales refused to respond to the survey by citing e.g. business secrecy¹⁴⁴ in spite of the fact that Finnwatch did not ask respondents to identify any of their client companies or to reveal any other business secrets.

Tax Health (JSP Health Oy), a one person expert company, is an example of a smaller actor. The company encourages tax planning as long as this is done pursuant to the law: the company advertises that it is "a different type of tax haven" according to which "tax planning is not anything special, nor illegal or immoral tax evasion".¹⁴⁵ The company's responses to the Finnwatch survey are given in summary in table 1.

The Taxpayers Association of Finland (Veronmaksajat ry) also provides tax services. It is not a company but an association that has nearly 230,000 members. Of these, 44,000 are corporate members. The association employs 16 full-time tax experts. The association offers its members free of charge telephone guidance in matters related to Finland's taxation, as well as more in-depth legal services for a fee via Verotieto Oy, which is owned by the association. The association

helps companies for example in establishing a company and in reorganisation, which to some extent also include tax planning or the assessment of likely tax impact. The association also accepts paid commissions in which it draws up advance ruling applications, requests for correction and tax appeals as well as helps in drawing up responses to the Finnish Tax Administration's letters where it requests additional information or requests for correction by the Tax Recipients' Legal Services Unit. However, the association does not provide assistance in legal disputes.¹⁴⁶

The taxpayers' association has drawn up principles for legal commissions, on the basis of which its lawyers cannot promote activities that can be considered incompatible with honour and good faith. Lawyers must also give up their assignment in accordance with the principles, if the lawyer's actions promote criminal or immoral activity: a lawyer also cannot diminish the good faith and reputation of the association or other lawyers. However, the content of immoral activities that go against good faith are not specified. The principles do not mention aggressive tax planning.

As was mentioned above, the majority of tax expert companies refused to engage in dialogue related to corporate responsibility with Finnwatch. Verona Tax & Legal (previously Veropaja), August Associates, Veropro and Fiscales all declined to respond. Alder & Sound only responded to part of the survey.

Tax company websites that Finnwatch examined did not contain public corporate responsibility policies, which would have condemned aggressive tax planning or advised people to refrain from this.

2.5 FINANCIAL SECTOR SERVICE PROVIDERS

According to a report by the TAXE 2 committee¹⁴⁷, which investigated the Panama Papers and other data leaks, also banks and other

141 Verona, Taxation, <http://www.verona.fi/palvelut/veronus/> (viewed on 5 July 2017)

142 Verona, Sanna Nokka, email 1 June 2017

143 Fiscales Oy, Palvelut, <http://www.fiscales.fi/palvelut> (viewed on 6 July 2017)

144 Karri Nieminen, phone call 15 June 2017

145 Tax Health website: <http://www.taxhealth.fi/> (viewed on 6 July 2017)

146 Taxpayers Association of Finland (TAF), Vesa Korpela, email 19 June 2017

147 Official name of the European Parliament's special committee on tax rulings and other measures similar in nature or effect

financial sector service providers have provided aggressive tax planning for their clients. Tax planning assisted by banks has utilised financial products, such as loans, derivatives, repurchase agreements or other instruments that are capital-conditional. The Panama Papers also revealed numerous instances of tax evasion, where banks has managed their clients' shell companies (see box on page 22 and 36).¹⁴⁸

Numerous financial institutions have been indicted in the United States for tax fraud or money laundering and have for this reason had to pay very high fines. According to the EU Parliament's TAXE committee's report published in 2016 only very few indictments have been issued in the EU thus far.¹⁴⁹

Banks and financial institutions and investment and insurance companies in Finland also provide taxation-related advice to private persons and companies, but their tax consultancy and role in tax planning is focused on a more limited range of services.

Tax consultancy or planning provided by Finland's financial sector is characterised by the fact that these are provided in connection with saving, investment, insurance and financial management services. It has also been possible to include the benefits gained from tax planning directly in ready-made financial products (see more on insurance wrappers page 38).

The examination of tax responsibility in Finland's financial sector has for the purpose of this report been limited to Finland's five largest banks: Nordea, Danske Bank, OP Group, Aktia and the Savings Banks Group¹⁵⁰. In addition to banks, the actors detailed in Chapter 2.4 as well as smaller banks and

insurance companies specialised in investment services provide insurance wrappers-related tax planning services. These services are briefly covered in a separate chapter on insurance wrappers on page 38.

In addition to Finland's largest banks, the survey was sent to e.g. Access Partners, a company specialised in acquisitions and financing. Access Partners did not respond to the survey as the company stated it does not provide tax consultancy or planning at all

Daily banking clients are provided insurance wrappers, wealthy clients provided services in Luxembourg

The banks that responded to the Finnwatch survey emphasised that they primarily discussed tax consequences related to Finnish legislation with their clients in matters related to inheritance, gifts or general changes in companies. Only Aktia openly stated that it provides tax planning services in connection with legal commissions for private persons, in cases where property is relinquished (sale, gift) and in connection with family and inheritance law commissions (estate inventories, the division of property, probate). Aktia said that it applied for advance rulings from the Tax Administration where necessary in difficult or unclear cases related to tax planning.¹⁵¹

Nordea, OP and the Savings Banks Group, on the other hand, denied providing tax planning services to their clients. Danske Bank said that it does not provide arrangements the purpose of which is to *evade taxes* as this is not in line with the bank's values¹⁵². Both Nordea and OP still stated in August 2014 in a survey carried out by the Osakesäästäjien keskusliitto that covered financial management services that they provided tax planning¹⁵³. According to OP, the study carried out by the Osakesäästäjien keskusliitto is erroneous with regard to tax planning services. OP only provides notarised banking services and

148 Clients of banks may be able to hide their assets from the tax authority or enforcement services, because the banks may have claimed to authorities that they are the real owners or beneficiaries of tax have-based companies and their transaction. European Parliament resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (2016/2038(INI)) AB, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0310+0+DOC+PDF+V0//EN>.

149 Ibid.

150 Largest banks based on client deposits and loans as well as number of employees Finance Finland, Pankkivuosi 2016, available at: <http://www.finanssiala.fi/materiaalit/FK-Pankkivuosi-2016.pdf>

151 Aktia Bank, Malin Pettersson, email 16 June 2017

152 Evasion of taxes is an illegal activity, which is based on the artificial avoidance of tax laws and the taxes referred to in it.

153 Osakesäästäjien keskusliitto, Viisas raha, 8/2014, available at: <https://www.osakeliitto.fi/wp-content/uploads/2015/05/vr082014.pdf>

e.g. consultation on tax consequences related to drawing up a will.

All the banks that the survey was sent to (Nordea, OP, Danske Bank, Aktia and the Savings Banks Group) also marketed insurance wrappers with tax benefits to their clients. For example, the Savings Banks Groups states on its website that the bank's savings insurance product supports tax planning¹⁵⁴.

The banks' own marketing materials reveal that more extensive tax planning services are provided to wealthier clients normally via the banks' private banking services. Aktia has previously provided tax planning services to all its clients but will only provide these as part of its private banking services in the future.

Both Nordea and Danske Bank also provide private banking services in tax haven Luxembourg. The banks do not themselves describe their services as tax planning. According to Danske Bank, its Luxembourg unit¹⁵⁵ provides "financial advice and planning for its clients outside the Nordic countries"¹⁵⁶. Nordea strongly disputes providing any type of tax planning for its clients. The bank told Finnwatch that it does not provide tax planning or promote tax evasion or aggressive tax planning¹⁵⁷.

However, it was revealed in connection to the Panama Papers leak that Nordea had been actively involved in its client's aggressive tax planning (see box on page 36). Internet archive Wayback Machine also contains information on Nordea having still openly marketed tax planning in Luxembourg a few years ago to visitors on its website¹⁵⁸.

Nordea, which disputes providing tax planning services refused to tell Finnwatch when it had made the decision to no longer provide tax planning services. For this reason, Finnwatch

feels it is unclear whether Nordea has really stopped providing these services.

Both Nordea's and Danske Bank's investment and financial management services have included long-ranging aggressive tax planning. In 2015, a case came to light where Nordea had marketed investment products to wealthy private persons in Spain that had been customised to avoid taxation in Spain. The arrangement was based on a nominal home loan that was given to clients, but which was actually used for investments administered by Nordea's unit in Luxembourg. The purpose of refinancing of the client's home was to avoid inheritance and capital tax. When investment activities began to show a loss, the clients lost their money. In addition to Nordea, Danske Bank has marketed and sold the same investment product through its Luxembourg unit¹⁵⁹.

The banks do not provide tax consultancy and planning outside the scope of asset management and other financial services and their personnel does not generally include an actual tax department with experts in tax law. Clients interested in comprehensive tax may be advised to contact the banks' partners.

It has been suspected that Nordea's network of service providers previously included Ocrä¹⁶⁰, which is known for its involvement in aggressive tax planning and which still listed Nordea as a partner on its website in 2016. Nordea has disputed any official cooperation with Ocrä and says that it opened bank accounts for Ocrä's clients at the beginning of the 2000s. Nordea has confirmed that it worked in cooperation with Mossack Fonseca, which was targeted in the Panama Papers¹⁶¹.

154 Säästöpankki, Säästäminen ja sijoittaminen, <http://www.saastopankki.fi/saastot-ja-sijoitukset> (viewed on 13 November 2017)

155 Danske Bank International Luxembourg

156 Danske Bank, Anu Iivonen, email 19 June 2017

157 Nordea, Susanna Aarnio-Halme, email 11 October 2017

158 Internet archive Wayback machine, <https://web.archive.org/web/20121002045131/http://www.nordea-privatebanking.com:80/Services/Wealth+planning/Tax/914280.html>

159 Yle, Ryöstelevät viikingit – Nordeaa ja Danske Bankia syytetään eläkeläisten huijauksista Aurinkorannikolla, <https://yle.fi/uutiset/3-8359064>

160 Nordea has disputed that it has had an official agreement with Ocrä although Ocrä listed the bank as one of its partners on its website. However, Nordea has opened bank accounts for Ocrä's clients. Nordea's statement on Ocrä is available at: <https://www.nordea.com/fi/media/uutiset-ja-lehdistotiedotteet/News-fi/2016/2016-07-06-nordean-lausunto-ocra.html>

161 Radio Sweden, Nordea admits working with Mossack Fonseca, <http://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=6404079> (viewed on 13 November 2017)

Nordea and the Panama Papers

According to the documents leaked from law firm Mossack Fonseca, Nordea has established hundreds of offshore companies in Luxembourg, Switzerland and the Isle of Man¹⁶². According to an internal enquiry by Nordea, of the 552 offshore companies that are clients of Nordea's unit in Luxembourg, 129 were under law firm Mossack Fonseca's administration or they were registered to Panama – the total wealth of these 129 companies in April 2016 was approximately 216 million euros. The report found deficiencies in the management and supervisory structures of Nordea's unit in Luxembourg, for example in relation to the prevention of money laundering and tax fraud.¹⁶³

In its response to Finnwatch, Nordea cited its internal inquiry¹⁶⁴ and denied facilitating tax evasion and tax fraud. According to the company, its internal inquiry did not find any evidence of the employees at Nordea's Luxembourg unit taking initiative in establishing offshore companies or that they actively helped clients in their efforts to evade taxes.

Finnwatch was unable to find this interpretation in Nordea's internal inquiry. Nordea's report describes in detail, for example the processes of Nordea's Luxembourg-based subsidiary in establishing offshore companies. According

to the report, each client makes a decision on establishing an offshore company only after meeting with Nordea's investment consultant, and Nordea has facilitated the establishment of the offshore company in cooperation with Mossack Fonseca. The report does not deny Nordea's role in the facilitation of tax evasion or tax fraud. Instead, the report states that the *"the investigation has not found evidence that employees in NBSA have proactively contributed to tax evasion"*. The report recommends Nordea to develop processes with which it can guarantee that the company does not in future conduct operations that could be seen as contributing to tax fraud¹⁶⁵.

Nordea's internal inquiry only dealt with the company's subsidiary in Luxembourg and its companies that were linked to Panama or Mossack Fonseca, which were clients of Luxembourg-based Nordea Bank SA (NBSA) on 15 April 2016. The inquiry did not apply to any other period in time, other countries in which Nordea operated or its partners linked to its offshore activities, which means that the real scope of Nordea's offshore activities in tax havens remains unknown.

In 2015, Nordea received a fine of approximately 5 million euros from Finansinspektionen Sweden's financial supervisory authority, because the bank did not take the steps required by law to prevent money laundering. According to a statement by Finansinspektionen, Nordea has had major shortcomings in the supervision of money laundering and terrorism related cash flow over numerous years.¹⁶⁶

162 A report by the European Parliament's Greens / European Free Alliance (EFA) Group based on the leaked materials from Panama listed 140 banks and intermediary companies that had the largest number of client relationships with offshore companies. Nordea was 51st on this list. the European Parliament's Greens / European Free Alliance (EFA) Group, 2016, Usual suspects? Co-conspirators in the business of tax dodging, available at: <https://www.greens-efa.eu/files/doc/docs/d6bd745c6d08df3856eb6d49ebd-9fe58.pdf>

163 Nordea, 20 July 2016, Comment by management on the report concerning Nordea's Private Banking activities, <https://www.nordea.com/fi/media/uutiset-ja-lehdistotiedotteet/press-releases/2016/07-20-07h03-johdon-kommentti-nordea-private-banking-toimintaa-koskevasta-selvityksesta.html> (viewed on 21 June 2017).

164 Nordea's internal inquiry was carried out by the head of Nordea's Compliance and Operational Risk operations. Additionally, Swedish law firm Mannheimer Swartling as well as local auditing companies and law firms provided advice and support to the bank related carrying out the inquiry. Enquiry available at: <https://www.nordea.com/Images/33-125429/Report-on-investigation-of-Nordea-Private-Banking-in-relation-to-offshore-structures.pdf>

165 "NBSA should review and adjust procedures related to offshore structures to ensure that NBSA does not perform any activities that could be perceived as supporting tax evasion."

166 Finansinspektionen, decision 18 May 2015, available at: <http://www.fi.se/contentassets/b9fca-c7ee33843b6b027b4832ed3848f/nordea-13-1784-eng2.pdf>

Nordea refused to disclose the names of its current partners to Finnwatch. First the company claimed that it did not have a network of service providers, but after Finnwatch noted that Nordea refers to its network on its own website on tax planning during acquisitions, Nordea refused to provide information on its partners. According to Nordea, it cannot provide "specific information on partners, as there are so many of them, and we cannot in this context name service providers without their consent". According to Nordea, its partners are Finland's largest law firms and auditing companies or other consultants who have been found to be reliable. It is unclear why Nordea can recommend its partners to its clients but cannot share information on them with Finnwatch.

The Savings Banks Group, Danske Bank, OP and Aktia told Finnwatch that they did not have any international partners in the provision of tax services. However, in summer 2016 Danske Bank still stated openly on its Luxembourg unit's website that it provides its clients the use of its extensive international business partner network in matters related to tax services and trusts¹⁶⁷. The references to tax planning services and international partners have been removed from the website after summer 2016, when the investigation related to Nordea's Panama Papers made waves in Finland, Sweden and Denmark.

With regard to corporate responsibility policies, banks did not deviate from the other companies that operate in the tax sector: the banks involved in tax planning that were included in the study do not have comprehensive corporate responsibility policies in place that apply to tax planning, which would go beyond existing statutory requirements.

The Danske Group's Tax Policy does not include corporate responsibility aspects that exceed statutory obligations. However, in addition to sincere compliance with the law Danske's policy emphasises openness and

cooperation with the tax administration¹⁶⁸. Danske Bank was the only one bank that responded to the survey that stated that it has rejected some client commission when it had determined that their aim was to evade taxes.¹⁶⁹

As a result of the public condemnation that Nordea experienced in relation to the Panama Papers, Nordea's policy is now a bit more advanced: according to its Tax Policy on Customer Advice¹⁷⁰, Nordea does not encourage its clients to compile tax plans that are legal but can be considered aggressive tax planning or that are contrary to Nordea's ethical standards and Nordea does not promote the drawing up of this types of plans. However, the policy does not specify how the bank defines aggressive tax planning. The policy also contradicts the response Nordea gave to Finnwatch, where it completely denied providing any type of tax planning for its clients.

The Savings Banks Group said that it did not have any policy in place concerning tax responsibility, because the bank does not provide tax planning services. Aktia stated that it has not drawn up separate public or internal tax responsibility policies because the bank provides a very limited range of tax planning services¹⁷¹. According to the OP Group, its Executive Board has drawn up a policy, for example for the domiciles and off-shore countries of OP's investment options, but the policy has not been published and no information is available on its content¹⁷².

Finance Finland (Finanssiala ry), the association that represents the interests of the financial sector has not drawn up more detailed guidelines on tax responsibility for the sector.¹⁷³

167 Internet archive Wayback Machine, <https://web.archive.org/web/20160606054108/http://www.danskebank.lu/en-lu/Private-Banking/Pages/Wealth-planning.aspx>

168 Danske Bank, 2017, Tax Policy, available at: <https://danskebank.com/-/media/danske-bank-com/file-cloud/2017/4/tax-policy.pdf>

169 Danske Bank, Anu Iivonen, email 19 June 2017

170 Nordea, Policy statement (extract from Tax Policy on Customer Service), available at: <https://www.nordea.com/Images/33-129396/Nordea-policy-statement-extract-from-tax-policy.pdf>

171 Aktia Bank, Malin Pettersson, email 16 June 2017

172 OP Group, Tuuli Kousa, email 12 July 2017

173 Finance Finland, Linjaukset, Vastuullinen finanssiala, <http://www.finanssiala.fi/linjaukset/vastuullisuus>

Insurance wrappers are a new favourite product to those aiming to avoid taxes

Insurance wrappers have been the topic of much public debate in Finland over the past few years and Finnish tax payers have invested more than 26 billion euros to these instruments¹⁷⁴. These investment products provided by insurance companies and marketed and sold by various banks are used for as tools for tax planning and the tax benefits they provide are utilised in their marketing.

Tax benefits gained from insurance wrappers are based on section 18, subsection 10 of the Act on the Taxation of Business Profits and Income from Professional Activity (360/1968), which allows insurance companies the opportunity to deduct compensation and insurance liability related transfers from their taxation. This law, created already in 1943, is justified as it has thus far been natural to not tax all insurance company income, as not all their income is straightforward profit, because they must be prepared to make compensation payments on later claims from sold insurances. This means that regulation has worked in favour of both insurance companies and their insured clients.¹⁷⁵

However, the loophole in the law has more recently opened a possibility to provide completely new investment products and insurance companies have begun to use their right to make tax-free balance provisions contrary to the original purpose of the law.

Technically, an insurance wrapper as an investment product works as follows: an insurance company enters into a so called capitalisation contract with a client on the management of the client's assets. In practice, an insurance company uses a client's assets for investments

the client has selected, meaning the client can manage their own investments under the insurance company's name¹⁷⁶. Investments can comprise stocks or other assets that are entered into the insurance companies balance sheet. By entering into the agreement, the insurance company commits to handing over to the client profits gained from their assets and the client's original capital¹⁷⁷. The insurance company will not have to pay taxes on the profits from the capitalisation contract that have accrued in its balance sheet. Neither will the client have to pay taxes, as from the perspective of taxation, the assets belong to the insurance company. As a result, no taxes need be paid on the profits accrued from shares contained in insurance wrappers before the withdrawal of profits, and these grow a compound interest in the insurance wrapper.

The insurance company of course charges its clients for the use of its insurance wrappers, and this charge is often a considerable sum. The Finnish Financial Supervisory Authority warns investors to assess the tax benefits carefully in relation to the cost of the service: the tax benefit can disappear because of the high fees paid to asset managers¹⁷⁸. In practice, permitting tax avoidance related to insurance wrappers is an income transfer from society to insurance companies and the service providers that market these investment products.

Assets other than stocks can also be included in insurance wrappers, for example real estate or shares of unlisted companies. These arrangements are carried out outside of Finland, in particular in tax havens¹⁷⁹, such as Ireland and

174 Yle, Valtiovarainministeriö: vakuutuskuorien veroedulle ei ole perusteluja, <https://yle.fi/aihe/artikkeli/2016/06/06/valtiovarainministerio-vakuutuskuorien-veroedulle-ei-ole-perusteluja> (viewed on 11 December 2017)

175 Government proposal 77/1943 proposes according to the then valid practice that "a Finnish insurance institutions could deduct the sum that must according to the law be transferred to the compensation and insurance payments fund.

176 A client's ability to manage their investments depends on the capitalisation contract in place. In the case of some contracts, clients give the insurance company to make all decisions concerning investments.

177 Naturally, the amount of capital can fall if the made investments result in losses,

178 Finanssivalvonta, Kapitalisaatiosopimusten ominaisuuksia, <http://www.finanssivalvonta.fi/fi/Finanssi-asiakas/Tuotteita/Sijoittaminen/Kapitalisaatiosopimukset/Ominaisuuksia/Pages/Default.aspx> (viitattu 17.11.2017)

179 Yle, Pekka Perä järjesti Talvivaaran osakkeitaan vakuutuskuoreen – sai miljoonaluokan veroedun,

Luxembourg. Numerous Finnish companies that provide tax services assist in the utilisation of insurance companies located in these countries. According to the Finnish Tax Administration, large amounts of assets have been moved from Finland to foreign insurance wrappers.¹⁸⁰ For example in the real estate sector, taxes on rental profits and real estate deals can be avoided by utilising insurance wrappers. Investium, which markets both Finnish and foreign insurance wrappers in Finland, advertises rented housing funds in insurance wrappers by stating that the rental and sales profits distributed by the fund are not taxed inside the insurance wrapper¹⁸¹.

The taxes paid on profits that accumulate in insurance wrappers can be avoided in their entirety by moving one's place of residence to a country with a low level of taxation before withdrawing profits.

There are also other loopholes related to the taxation of profits that accumulate in insurance wrappers, as capital can be withdrawn from insurance wrappers tax-free. However, Finnish legislation has not specified whether capital or profit must be withdrawn first. Insurance wrapper investors, whose actions are in the grey area of tax legislation, have, thus, been able to withdraw first a sum equal to their capital from the insurance wrappers and then wait five years¹⁸². If the tax authority has not approached the investor during that five year period, the investor can report after this period has come to an end that they withdrew their profit first. After this, the withdrawal of capital

from the insurance wrapper is tax-free and no taxes need to be paid on the investment's profits in Finland.

The problem is highlighted when we take into account that foreign actors are not obligated to submit annual reporting on the funds and wealth that their Finnish clients draw from wrappers. Private persons are also not obligated to report on investments contained in insurance wrappers. It is thus very difficult for the Finnish Tax Administration to supervise the sector unless the parties subject to tax themselves report their income to the tax authorities.

<https://yle.fi/uutiset/3-9682890>; Luxemburgissa palveluita tarjoaa esimerkiksi Swiss Life Group, <https://www.swisslife-global.com/private/news/archive/2014/march/case-study-finland/lapfinland.html>

180 Finnish Tax Administration, Antti Tokola, interview 19 October 2017

181 Investium, presentation at Arvoasuntopäivät 6 May 2015, presentation can be viewed at: <http://docplayer.fi/1811407-Uudenlainen-tapa-sijoittaa-kiinteisiin-verotehokkaasti-sijoitusjohtaja-jussi-pekka-tal-si-arvoasuntopaiva-porssitalo-helsinki-06-05.html>

182 The Finnish Tax Administration can correct an error in taxation within a period of five years, if the party liable to pay tax has neglected their responsibility to report the matter to which the error applies (Section 56, subsection 4 of the Act on Tax Procedure).

3. Conclusions

There are dozens of companies in Finland that provide tax planning services. Large international auditing and consultancy companies provide the most extensive range of tax planning. These companies employ more than 700 people in Finland who focus entirely on the provision of different tax services. Accounting firms, legal and law firms that provide tax services as well as a mixed group of other companies that provide tax planning services operate in Finland.

The Big 4 (PwC, Deloitte, KPMG and Ernst & Young), which are Finland's tax service market's leaders, have assisted their clients in aggressive tax planning and even tax evasion in numerous countries.

Only little information is available on the operations of the Big 4 networks or other similar tax consultants in Finland, as court documents concerning tax matters are not published in their entirety. The name of the defendant, who is obligated to pay tax, is not listed in decisions by the administrative courts and Supreme Administrative Court, nor do the documents name the parties that have planned the tax arrangements. The lack of openness is a significant problem and the concealment of court rulings concerning taxation deviates from international policy.

However, it has been possible to access some information, and, for the purposes of this report, Finnwatch has utilised, for example, documents from state and municipal pension institutions that fall within the scope of the Act on the Openness of Government Activities. The tax memos requested by Finnwatch reveal, among other things, that PwC and KPMG have provided tax planning services to VER – the State Pension Fund of Finland and Keva. A detailed example in this Finnwatch report describes a tax structure planned by PwC and approved by KPMG in which real estate investments to Great Britain had been made via Jersey, a tax haven. The fund structure was utilised by Keva in its investment.

An effort was made to get responses from 80 companies by sending them a separate survey. Four of the companies that responded to the survey confirmed that the tax authorities have taken issue with some of the tax arrangements that they had planned or assisted with, and in some cases the arrangements have been determined by a court of law to constitute tax evasion. The companies emphasise that these cases are rare.

A total of around 30 companies that provide tax services in Finland responded to the survey sent by Finnwatch, the aim of which was to determine the content and scope of tax planning services provided by these companies. The response rate to the survey was less than 40 per cent, which can be considered low. It seems that companies that provide tax services are not interested in engaging in discussion on corporate social responsibility, although the acceptability of the sector has garnered extensive public debate.

Not one of the tax companies that were part of the study had a proper tax responsibility policy in place. If responsibility policies or ethical codes of conduct have been drawn up, they do not go beyond what is stated in existing statutory obligations. Not one of the companies clearly states that it places restrictions on its services due to corporate social responsibility. The sector's joint self-regulation of tax planning seems to be undeveloped.

The largest international actors in the market want to emphasise that they act within the scope of the law and aim to blur the concept of aggressive tax planning. For example, PwC considers aggressive tax planning a subjective concept and does not feel it is necessary to define it in the scope of its own operations. KPMG, on the other hand, said that it only assists its clients in "commercial arrangements". Its definition of commercial activities, however, is so broad-scoped that even very artificial arrangements fall under it.

All the companies that provide tax services that responded to the Finnwatch survey were not of the same opinion. One tax expert stated: "It is worthwhile to study and monitor aggressive tax planning. It would be better for everyone if we were able to eliminate it. This of course is more of a pipe dream so long as money and greed make the world go round and legislation gives the opportunity to engage in questionable solutions."

A small group of companies directly markets very aggressive tax planning that can to some extent be seen as based on the veil of secrecy provided by tax havens. These actors will become marginal in coming years when automatic information exchange expands to cover all the most significant financial havens¹⁸³.

The PANA Committee established by the European Parliament has stated that the tax haven economy would not exist were there not attorneys, consultants and banks that facilitate these arrangements. However, the parties who benefit indirectly from tax avoidance, have been able to operate for a long time in peace without public debate on the acceptability of their activities. The provision of assistance in cases of tax evasion is not usually illegal and the companies that have planned their clients' tax arrangement are not held accountable for their actions.

The EU is currently drawing up a directive on the obligation to report cross-border arrangements, which means that authorities would have access to information on the tax arrangements planned by companies that provide tax planning. The directive must be further developed by adding reporting to authorities that support publicity and by removing the loophole related to so-called main benefit tests. The following chapter contains a detailed list of recommendations by Finnwatch for tackling harmful tax services.

¹⁸³ Finnish Tax Administration, Automatic information exchange https://www.vero.fi/tietoa-verohallinnosta/tietoa_verotuksest/verovaj/automaattinen_tietojenvaiht

4. Recommendations

DECISION-MAKERS

- The European Union is currently discussing the Council's proposal for a directive on the reporting of cross-border arrangements. The directive proposal is highly welcomed, but in order for it to effectively fulfil its purpose, certain defects in it must be corrected. The key changes that need to be made are related to the elimination of the main benefit test related to the publishing of reported tax arrangements, the addition of a general principles on aggressive tax arrangements and the sharing of information concerning tax arrangements with third countries. Finnwatch gave more detailed recommendations for the correction of the directive during its statement to Parliament on 28 August 2017¹⁸⁴. If the Council's directive does not proceed to the EU level, Finland must enact a similar national law.
- The proposal for a directive on cross-border arrangement mentioned above states that the purpose for the directive is *"to design a mechanism that will have a deterrent effect; that is, a mechanism that will dissuade intermediaries from designing and marketing such arrangements"*. This objective is a good one, but an effort should be made to achieve this directly and not through an obligation to report. Legislation must be enacted that will prohibit the provision of assistance in tax evasion. The prohibition could be implemented, for example, by instating sanctions for the party that planned, implemented or approved a tax arrangement that led to tax evasion, when the legal person that was their client has been found guilty of tax evasion in a court of law. Sanctions can include e.g. fines, refusal to grant state or EU funding or other public aid, being prohibited from acting in the role of an advisor in state or EU bodies and, in serious and repeated cases, the withdrawal of an operating licence. The effectiveness of sanctions can also be improved by blacklisting service providers, who have planned arrangements that have been found to constitute tax evasion and by determining the possibilities for preventing blacklisted service providers from participating in public procurements.
- Court documents that apply to taxation must be made public as is the case with all other legal documents in Finland. Openness is justified so that tax recipients could access correct information on what means are used in the tax arrangements of individual taxpayers. Companies sentenced for tax evasion and the names of the tax consultants who assisted them could then be published and the social discussion on current court rulings could be more equal and open.
- Information on income taxes is published in Finland each year on our so-called "tax day". The Act on the public disclosure and confidentiality of tax information should be expanded to also apply to changes that are made after a taxation period comes to an end. This would ensure public access to information also on those who have been caught by the tax authority for tax arrangements. The secrecy of corrected tax data is backward. To exaggerate a bit, we can state that at this time, incorrect information on taxation in Finland is currently public, but the correct, corrected information is not.
- The tax benefits of artificial investment instruments, such as insurance wrappers and their capitalisation contracts, that unreasonably exploit the tax exemptions granted to insurance companies, must be eliminated with new legislation. The Ministry of Finance has appointed a working group¹⁸⁵ to determine the tax treatment of

184 Finnwatch's statement to the Parliament's tax subcommittee on 28 August 2017, available at: http://www.finnwatch.org/images/Rajat_ylittavat_jarjestelyt_Finnwatch_28082017.pdf

185 Ministry of Finance, The working group assessed the tax treatment of various forms of investment, http://vm.fi/artikkeli/-/asset_publisher/tyoryhma-arvioi-erisijoitusmuotojen-verokohtelua (viewed on 29 November 2017)

various forms of investment. In this context, attention should also be drawn to insurance wrappers. More generally, a sector must be added to the Act on Taxation Procedures that contains provisions on actual beneficiaries that could be generally applied to counter all similar arrangements that conceal property ownership and actual beneficiaries. The section can be implemented, for example, at the same time as Finland implements the Anti-Tax Avoidance Directive.

- Regulation related to insurance wrappers must be updated also by adding provisions on a separate exit-tax¹⁸⁶, which is already used by Norway, France and the United States. The provision would allow the country in which the person has resided at the time of the value increase the tax sales profits. The tax would allow authorities to intervene in the tax evasion related to the artificial change of country of residence. This provision should also be implemented at the same time as Finland implements the Anti Tax Avoidance Directive (the directive already contains an exit tax provision for companies).
- Lux Leaks, the Panama Papers and the Paradise Papers have brought to light very valuable information, which has helped and will help in dealing with the tax haven economy. However, individuals who have leaked information that is socially valuable and outed criminal actions act with the knowledge that they could incur sanctions¹⁸⁷ and that they might even be risking their own lives when doing this¹⁸⁸. Finland must work to influence the EU to create clear legal rules in the scope of which people who reveal illegalities can

be effectively protected. A decision can be made not to prosecute, even for the leakage of confidential data in cases where the person has documented and revealed illegal grossly unjust practices or practices that are otherwise harmful for the public interest.

- The tax administration's right to access tax memos during comparison data audit must be ensured with legislation (see the Supreme Administrative Court decision that was covered previously on page 23). The nondisclosure of memos to the tax administration is an unnecessary hindrance in the investigation of tax arrangements.
- Finland and the EU must reform their corporate tax legislation so that aggressive tax planning is illegal, and authorities can intervene in tax evasion. A report published by Finnwatch titled *Recommendations for the prevention of aggressive tax planning by companies* provides detailed recommendations concerning the corporate tax reform¹⁸⁹.

186 The tax has also been called an exit tax, but this gives a poor description of its purpose and function.

187 Deltour was sentenced in Luxembourg to six months of conditional imprisonment and a 1,500 euro fine. Euobserver, <https://euobserver.com/justice/137256> (viewed on 29 November 2017)

188 Daphne Caruana Galizia, who was investigating the suspected ties of Malta's top political leadership to tax haven-based companies was murdered with a car bomb in October 2017. Yle, Tunnettu tutkiva toimittaja murhattiin pommi-iskussa Maltalla, <https://yle.fi/uutiset/3-9886239> (viewed on 29 November 2017)

189 Finnwatch, 2017, Recommendations for the prevention of aggressive tax planning by companies, available at: https://www.finnwatch.org/images/pdf/Ve-rosuositukset_final.pdf

COMPANIES THAT PROVIDE TAX PLANNING SERVICES

- Companies that provide tax planning services must draw up a public tax responsibility policy, where they commit to advising their clients only to promote solutions that are pursuant to tax laws both literally and in spirit and as a result of which companies will pay taxes to the countries where their profit and value has been formed as a result of actual business operations. Tax companies must refrain from the misuse of loopholes in tax laws that allow profits to be transferred to countries with a low level of taxation with arrangements the grounds of which are thin and the primary purpose of which is to avoid the payment of taxes.
- Tax consultants, lawyers, finance sector companies and associations that represent the interests of taxpayers must draw up ethical codes of conduct for tax responsibility, which recognise the corporate social responsibility of tax consultants.
- Companies that provide tax services must turn to the Finnish Tax Administration for advice in matters related to their clients that are subject to interpretation, before making any decisions that will affect their taxation and ensure the tax treatment of any significant reorganisation measures or other actions that involve tax risks by applying for advance rulings or holding provisional talks. All clients of the Corporate Taxation Unit must participate in the Finnish Tax Administration's in-depth client cooperation and make the tax administration aware of any tax arrangements they are planning before these plans are implemented.

Annex 1 Text on tax planning linked to Keva's real estate investment

(unofficial English translation)

In an email dated 28 September 2017, you requested comments from Keva on the Rockspring UK Value II investment fund case study.

Keva has entered into a 50 million pound investment agreement in the real estate fund in question in 2014, and its procurement price was thus 56.7 million euros. In addition to Keva there are around 20 other investors, who have invested in the same fund, and at the time of closing, the total investments made in the fund equalled 342 million pounds. The fund's investors include several international institutional investors, such as pension funds.

PwC, which was named in the case study's subheading has not assisted Keva nor has it worked at Keva's commission. PwC acts as a tax consultant commissioned by the fund, and it together with the fund manager have planned the fund's structure and it has drawn up a tax memo on behalf of the fund.

KPMG, on the other hand, has assisted Keva in going through the fund structure and the tax memo drawn up by PwC and it has assessed the structure of the fund and the feasibility of its taxation from Keva's perspective. KPMG's statement is part of the normal analysis of a potential investment option in international (real estate) investments, which a prudent investor carries out before it carries through on an investment.

The fund structure, the terms of the fund and the related taxation aspects are the same for all parties who have invested in the fund. The structure was not planned for Keva. Keva was given the structure of the fund and its related tax arrangements, and Keva took no part in planning these nor did it ask for any special arrangements related to the fund's structure or taxation. Keva has invested in the same structure with the same terms of taxation as all the fund's other investors. This is a normal international real estate investment structure, which involves all the normal related tax inquiries.

Pursuant to Section 20, subsection 1(2) of the Income Tax Act, Keva is a tax-exempt association. Due to its tax-exempt status, Keva does not experience income tax consequences for the income from direct real estate investments in Finland, rental income from mutual real estate companies, nor for income from Finnish real estate investment funds. Keva does not make direct real estate investments abroad with the exception of the Nordic countries. Instead investments are made via international real estate investment funds. As with real estate investments in Finland, Keva's tax-free status is also the premise for the international real estate investments we own.

The fund is the English Limited Partnership, in other words a flow-through entity in which the fund's investors are taxed in their home country, in accordance with their own taxation status. The company form can be compared to a Finnish Limited Partnership. Limited Partnerships as a company form are known and recognised in numerous countries and it is commonly used in international investment activities. The purpose of this is to ensure the neutrality of taxation by avoiding multiple taxation and the objective is for taxes to be paid in the investor's country of residence according to its own taxation status. The purpose of KPMG's statement has been to ensure that this is realised with regard to Keva.

Pursuant to Section 21 on the Act on Keva, when investing funds from pensions funds, Keva must ensure the reliability, the profit, the liquidation capacity and the distribution of its investments. The insurance liability fund was established for balancing out municipal sector pension expenditure. The fulfil the purpose of the law Keva's investment activities comply with the duty of care, and for this reason, KPMG was given a commission to check the fund's structure and its aspects related to taxation as well as their feasibility for Keva.

At the end of the case study, you state that "KPMG confirms in its statement that it considers the suggested fund structure tax-efficient for Keva, in other words, due to the arrangement the fund and Keva would pay as small an amount of taxes for their investment activities as possible".

The objective of Keva's investment activities is to support the financing of the long-term liabilities for the municipal insurance scheme with the help of real profits. For this reason, Keva's investment activities cannot start from the premise that more taxes will be paid than necessary. The structures of funds are planning within the scope of international laws, so they are as sensible as possible with regard to taxation so that investors or in Keva's case the beneficiaries of the municipal pension scheme will get as good a profit as possible from these.

Keva does not need to nor can it pay "excess" or double taxes to foreign countries, as Keva's task as a prudent investor is to ensure that that the taxation of its activities is correctly carried out in accordance with international laws and by taking into account Keva's status as a Finnish tax-exempt association and the safekeeper of Finland's municipal sector's pensions.

Sincerely

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