



20 February 2017

European Parliament
PANA Committee

Letter dated 23.11.2016 D 320310

Reply to request for Member State contributions: investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level

Dear Mr. Langen,

With reference to your request for information, please find below our reply.

1) *Legal definitions of administrative and criminal tax-related offences in Finland (covering avoidance, evasion, fraud and money laundering at both the individual and corporate levels, references to the national laws underpinning these definitions)*

Respectfully we would like to bring to your attention the fact that the term 'tax' has not been defined in your request for information. Therefore, it is not clear whether your request for information concerns all payments of money required by law to finance public expenditure, which cover both taxes and other payments. The latter refers to compensation paid to a public corporation generally in exchange for a service. On the other hand, there are certain compulsory tax-like payments in Finland, such as health insurance contributions, employment pension contributions, employers' health insurance contributions, the strategic stockpile fee, the oil damage duty and the oil waste duty etc. Payments are most often earmarked for a particular purpose, whereas the purpose for which taxes are to be used is not specified.

Below are described tax-related offences, whereas offences relating to compulsory tax-like payments are not covered.

1.1 *Legal definitions of tax-related criminal offences*

Criminal Code of Finland (reference number 39/1889¹ in Statutes of Finland) and Act on Assessment Procedure (1558/1995)² contains statutes concerning tax fraud, aggravated tax fraud, petty tax fraud and tax violation as well as neglect of duty to provide information on taxation.

¹ Please see the link: <http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001>.

² Please see the link: <http://finlex.fi/fi/laki/ajantasa/1995/19951558>.

Chapter 29 of the Criminal Code of Finland (39/1889) - Offences against public finances (769/1990)

Section 1 - Tax fraud

(1) A person who

- (1) gives taxation authority false information on a fact that influences the assessment of tax,
- (2) files a tax return concealing a fact that influences the assessment of tax,
- (3) for the purpose of avoiding tax, fails to observe a statutory duty pertaining to taxation that is of significance in the assessment of tax, or
- (4) otherwise acts fraudulently, and

thereby causes or attempts to cause a tax not to be assessed, a tax to be assessed too low or a tax to be unduly refunded, shall be sentenced for *tax fraud* to a fine or to imprisonment for at most two years.

Section 2 - Aggravated tax fraud

If in the tax fraud

(1) considerable financial benefit is sought or

(2) the offence is committed in a particularly methodical manner

and the tax fraud is aggravated also when assessed as a whole, the offender shall be sentenced for *aggravated tax fraud* to imprisonment for at least four months and at most four years.

Section 3 - Petty tax fraud

If the tax fraud, when assessed as a whole, with due consideration to the amount of financial benefit sought and the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for *petty tax fraud* for a fine.

Section 4 - Tax violation

(1) A person who, in order to gain financial benefit for himself or herself or another, fails to pay in time one of the following for a reason other than insolvency or a stay on payments imposed by a court:

- (1) a withholding tax, a tax-at-source or a conveyance tax,
- (2) a turnover tax calculated per calendar month or a comparable tax payable on certain insurance premiums,
- (3) a value-added tax, or
- (4) an employer's social security contribution

shall be sentenced, unless the act is punishable as tax fraud, for a *tax violation* to a fine or to imprisonment for at most six months.

(2) However, a slight failure which has been rectified without delay is not deemed a tax violation.

Section 9 - Definitions and allocation of liability

(1) For the purposes of this Chapter, a *tax* also refers to

(1) an advance tax and a public fee that is comparable to a tax, and

(2) a levy collected on the behalf of the European Communities, to be forwarded to the European Communities for inclusion in the Community budget or another budget maintained by or for the European Communities.

(2)

Section 10 - Corporate criminal liability

The provisions on corporate criminal liability apply to tax fraud and aggravated tax fraud that is directed at a tax referred to in section 9, subsection 1(2) and to subsidy fraud, aggravated subsidy fraud and misuse of a subsidy.

Section 11 – Relationship between a punitive tax and customs duty increase, and tax fraud and a tax violation

(1) The report and criminal investigation of, and charges and punishment in, a criminal case referred to above in sections 1, 3 and 4 may be waived if a punitive tax or customs duty increase is deemed a sufficient penalty. In assessing the case, consideration is given to the seriousness and repeated nature of the act or the omission, the expected punishment, the amount of the tax or customs duty connected to the act or omission, the size of the punitive tax and customs duty increase, and the possible other consequences to the taxpayer as a result of the act or omission.

(2) Charges may not be brought for nor court judgment passed in a case referred to above in sections 1-4 if a punitive tax or customs duty has already been imposed on the same person in the same case. Notwithstanding this, charges may be brought and a court judgment passed if, after the punitive tax or customs duty has been imposed, evidence has been received of new or previously unrevealed essential circumstances, and the punitive tax increase previously imposed in the same case has been annulled by a separate decision taken on the basis of section 3 of the Act on Punitive Tax or Customs Duty Increases (781/2013).

Section 86 – Tax fraud of the Act on Assessment Procedure

(1) The penalty for unlawful tax avoidance and an attempt to unlawful tax avoidance is provided for in Chapter 29. § 1-3 of the Criminal Code (39/1889).

(2) If an offense referred to in subsection 1 with regard to the amount of tax and other circumstances are minor, the tax authority, also taking into account any tax increase applied, may not to report the matter to the prosecutor.

Section 87 - Neglect of duty to provide information on taxation of the Act on Assessment Procedure

(1) Those who neglect the obligation to provide information on taxation contained in Chapter 3 shall be fined for neglect of the duty to provide information on the taxation.

(2) Provisions for leniency in terms of notification, investigation, prosecution or punishment for an offense referred to in subsection 1 are provided for in Chapter 29 § 11 of the Criminal Code.

1.2 Legal definition of tax-related administrative offences

Act on Assessment Procedure (1558/1995)³ contains statutes concerning tax avoidance and surtax. The latter defines situations of negligence in which surtax may be imposed. These circumstances mostly relate to neglect of duty to provide information on taxation.

Section 28 - Tax avoidance

(1) If a situation, transaction or measure has artificially been given a legal form, which does not correspond to the actual economic substance, true nature or purpose of the matter, taxation should be carried out as if the correct form had been used. If the price for sales of goods or services, other compensation, or due date for payment has been agreed or established at an amount lower than what may be considered reasonable, or if some other measure has been taken for the manifest purpose of reducing the tax to be paid, the

³ Please see the link: <http://finlex.fi/fi/laki/ajantasa/1995/19951558>.

tax authority may estimate the amount for which tax should be paid, thus using the actual values of an income or an asset.

(2) If it becomes obvious that the tax authority should assess the taxes by estimation as described above, consequently, the tax authority should thoroughly examine all the findings of fact that may have an impact on the question, and give the taxpayer an opportunity to explain his position in respect of the findings. If the taxpayer fails to explain that the situation, transaction or measure has been given a legal form quite appropriate for the economic substance, true nature and purpose of the matter, or fails to explain that the rationale is not the manifest purpose of reducing tax, the tax authority should assess the taxes by estimation as instructed in subsection 1 above.

Section 32 – Surtax

(1) If the taxpayer has filed a tax return, another mandatory return, or another comparable notice, document or filing that has a minor error or omission, and, and in spite of prompting (proof of prompting to be shown), has neglected to correct the error or omission, or if the taxpayer has been late, without an acceptable reason, in submitting a notice, document or filing, the tax authority may debit surtax — €150 maximum. (24.6.2004/565)

(2) If the taxpayer has filed a tax return, another mandatory return, or another comparable notice, document or filing that has a major error or omission, or has not filed it until prompted (proof of prompting to be shown), the tax authority may debit surtax — €800 maximum.

(3) If the taxpayer has, by way of intent or gross negligence, filed a tax return, another mandatory return, or another comparable notice, document or filing that has a major error or omission, or if the taxpayer has failed to submit any filing, the tax authority may debit surtax amounting to 30 percent of the taxable income to be added, and, as appropriate, amounting to 1 percent of the asset balance to be added. For the purposes of this subsection, amounts to be added to taxable income also include any adjustment to the taxable income for a later tax year. Further, the tax authority may debit surtax as provided above, if instead of the taxpayer, another party, by way of intent or gross negligence, has filed a return in which an amount of income and a type of income has falsely been characterized incorrectly.

(4) If the taxpayer has failed to comply with the deadlines provided in § 14 c above when presenting the taxpayer's transfer pricing documentation, or additional complementation, or has let major errors and omissions be included in the presented documentation, the tax authority may debit surtax — €25,000 maximum.

(5) Surtax is to be added to the amount of tax after subtraction of the tax credit on a deficit in capital income, and other tax credits, within the meaning of Income Tax Act.

(6) Surtax should be remitted to the State of Finland directly if no tax is being debited in connection with the official decision to debit surtax.

1.3 Legal definition of criminal offences in regard to money-laundering

The Chapter 32 of the Criminal code contains the statutes concerning money laundering.

Chapter 32 of the Criminal code - Receiving and money laundering offences

Section 6 – Money laundering

(1) A person who

(1) receives, uses, converts, conveys, transfers or transmits or possesses property acquired through an offence, the proceeds of crime or property replacing such property in order to obtain benefit for himself or herself or for another or to conceal or oblite-

rate the illegal origin of such proceeds or property or in order to assist the offender in evading the legal consequences of the offence or

(2) conceals or obliterates the true nature, origin, location or disposition of, or rights to, property acquired through an offence, the proceeds of an offence or property replacing such property or assists another in such concealment or obliteration, shall be sentenced for *money laundering* to a fine or to imprisonment for at most two years.

(2) An attempt is punishable.

Section 7 - Aggravated money laundering

(1) If in the money laundering

(1) the property acquired through the offence has been very valuable or

(2) the offence is committed in a particularly intentional manner,

and the money laundering is aggravated also when assessed as a whole, the offender shall be sentenced for *aggravated money laundering* to imprisonment for at least four months and at most six years.

(2) An attempt is punishable.

Section 8 – Conspiracy for the commission of aggravated money laundering

A person who agrees with another on the commission of aggravated money laundering directed at the proceeds of the giving of a bribe, the acceptance of a bribe, or aggravated tax fraud or aggravated subsidy fraud directed at the tax referred to in Chapter 29, section 9, subsection 1(2), or at property replacing such proceeds, shall be sentenced for *conspiracy for the commission of aggravated money laundering* to a fine or to imprisonment for at most one year.

Section 9 – Negligent money laundering

A person who through gross negligence undertakes the actions referred to in section 6 shall be sentenced for *negligent money laundering* to a fine or to imprisonment for at most two years.

Section 10 - Money laundering violation

If the money laundering or the negligent money laundering, taking into consideration the value of the property or the other circumstances connected with the offence, is petty when assessed as a whole, the offender shall be sentenced for a *money laundering violation* to a fine.

Section 11 – Restrictive provisions

(1) A person who is an accomplice in the offence through which the property was obtained or that produced the proceeds (*predicate offence*) shall not be sentenced for the offence referred to in this Chapter. However, a person may be sentenced for an offence referred to in section 7 if the money laundering offence, with consideration to the continuous and planned nature of the acts forms the most essential and blameworthy part of the totality of offences.

(2) The provisions of this Chapter do not apply to a person living in a joint household with the offender, and who only used or consumed property obtained by the offender for ordinary needs in the joint household.

Section 12 – Forfeiture

(1) Property that has been the target of an offence referred to in section 6, 7 or 9 shall be ordered forfeit to the State. The provisions of Chapter 10, section 11, subsection 3 apply to the forfeiture.

(2) The provisions of Chapter 10 apply to forfeiture of other property.

(3) The provisions of subsection 1 notwithstanding, property that is the target of the offence may instead of being ordered forfeit to the State be ordered as compensation or restitution to the person injured by the predicate offence, if the nature of the property is suitable for this and compensation or restitution has not been paid to him or her, with application where appropriate of the provision in Chapter 10, section 2, subsection 3. However, the property shall be ordered forfeit if the nature of it is not suitable or it cannot be ordered paid as compensation or restitution to the injured person due to the bar referred to in Chapter 10, section 2, subsection 3. In such case the provision of Chapter 10, section 11, subsection 2 applies to the right of the injured person to receive a comparable amount as compensation or restitution from State funds.

Section 14 - Corporate criminal liability

The provisions on corporate criminal liability apply to a receiving offence, an aggravated receiving offence, a professional receiving offence, money laundering, aggravated money laundering and negligent money laundering.

1.4 Legal definition of administrative offences relating to money laundering

The Financial Supervisory Authority (FIN-FSA) supervises e.g. all financial / banking groups operating in Finland. The FSA has not issued administrative sanctions relating to money laundering.

The Government has given a proposal to the Parliament on amending Act on Detecting and Preventing Money Laundering and Terrorist Financing. The aim of the proposal is to implement Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. One of the key elements of that proposal is to introduce new supervisory powers to different authorities operating against money laundering and also to widen the scope of administrative sanctions in line with the Directive.

2) *The names, mission statements and powers of entities in Finland, which are responsible for the handling of Suspicious Transaction Reports (STRs), the names of the Financial intelligence Units (FIUs) required under European Union law*

2.1 Name of the Financial Intelligence unit:

Rahanpesun selvittelykeskus /RAP = the only unit responsible of handling STRs

2.2 Mission statement:

"Trying to get most use of the data from STRs/CTRs"

According to the AML legislation the duties of the Finnish FIU are following:

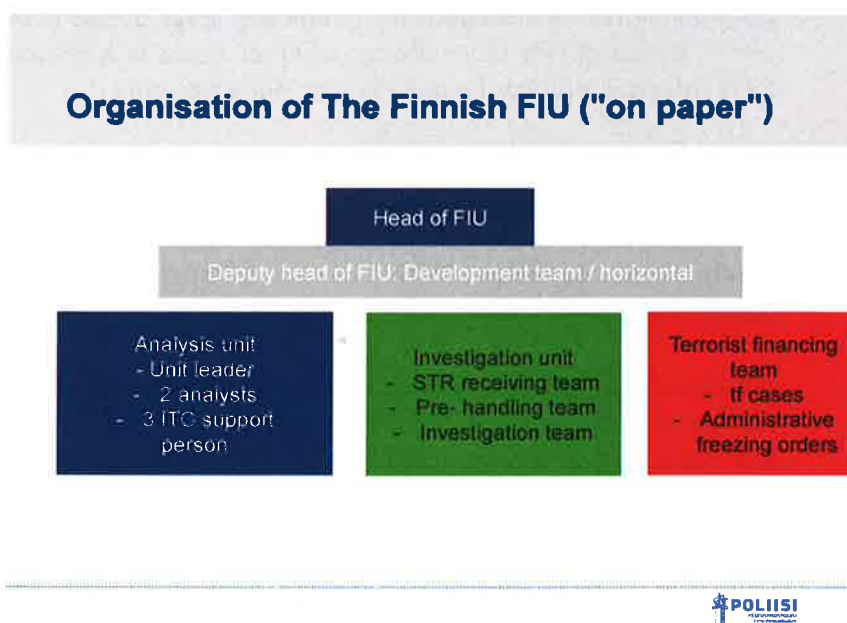
- 1) detecting and preventing money laundering and terrorist financing;
- 2) promoting cooperation between authorities in the fight against money laundering and terrorist financing;

- 3) cooperation and exchange of information with the authorities of a foreign State and international organizations that are responsible for detecting and preventing money laundering and terrorist financing;
- 4) cooperation with parties subject to the reporting obligation;
- 5) giving feedback on the effects of reports referred to in sections 23 and 24;
- 6) keeping statistics on the number of reports received under sections 23 and 24 and the number of transactions suspended under section 26; (327/2013)
- 7) receiving reports referred to in section 3 of the Act on the Freezing of Funds with a view to Combating Terrorism (325/2013), establishing grounds for the decisions to freeze funds as referred to in section 4 of the said Act and making proposals concerning decisions to freeze funds. (327/2013).

2.3 Powers of FIU Finland:

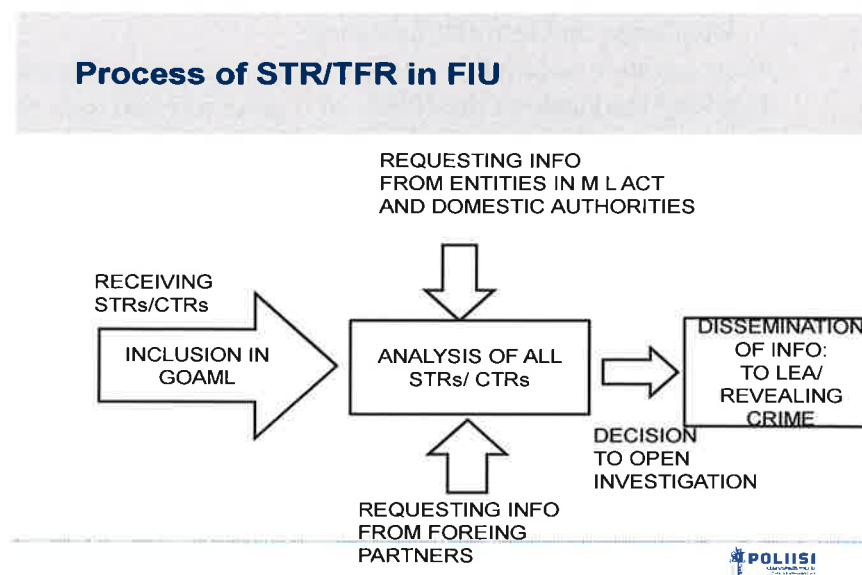
- **Same powers as police unit:**
 - * **possibility to request additional information from all obliged entities and other private sector companies,**
 - * **possibility to request additional information from all authorities,**
 - * **direct access to tax information,**
 - * **possibility to hear persons and request documents,**
 - * **possibility to post-pone the transaction for five working days**

2.4 Details on structure:



2.5 Staff resources: 30

2.6 Working practices and activities in tax-related crimes



According to Standard operational procedure, when case concerns possible tax crime, the personnel of FIU will contact personnel of tax authorities. Tax authorities have nominated three persons, who interact on FIU for possible cases. They are first screened with tax registers, and if there is a reason to believe some possible tax crime, they are first analysed within FIU (for links on criminality and pending crime cases) and then passed to tax authorities by decision of commanding level police officer. Tax authorities may only use information for determining whether there is a reason to suspect crime or not. No STR information may be used for tax purposes only.

2.7 How relevant national entities interact:

For FIU most relevant authorities are law enforcement authorities and tax authorities and enforcement authorities. With those the co-operation is based on direct contact and FIUs possibilities to disseminate information directly.

For dissemination of information the limit is that information may be used only on revealing, detecting and preventing money laundering and terrorism financing. Thus, no information can be disseminated for administrative (as tax or enforcement) purposes. This is a small hinder on co-operation.

3. Information on the national prosecution and penalties regime applicable and applied in your Member State in relation to tax-related offences, supported by an explanation on the state of play in relation to the number of cases (progress and outcomes, as appropriate), and a statement covering achievements and problems encountered to date. In particular, up-to-date information on the activities of the national supervisory authorities for credit and financial institutions and other obliged entities, including statistics on the number of cases related to the offences covered under item 1, eg. The types of companies involved, the types of offences sanctioned and the value of the penalties/fines issued. Furthermore, it would be also be helpful to submit information on the number of ongoing and planned investigations pursuant to Panama Papers and Bahama leaks. If specific case-information may not be shared for legal reasons, the submissions of consolidated anonymized data or analysis would nevertheless be helpful.

3.1 Information on the national prosecution and penalties regime applicable and applied in your Member States in relation to tax-related offences

We would like to refer to the publication of the Finnish Tax Administration's Grey Economy Information Unit's report 'Grey Economy Control – Statistics 2015', which is available at http://www.vero.fi/download/Grey_Economy_Control_Statistics_2015/%7BD0362584-8A0F-4BE5-AC94-9D667960DCAA%7D/12145. Statistics for 2016 will be available in the spring 2017.

3.2 Support for information in 3.1 by an explanation on the state of play in relation to the number of cases (progress and outcomes)

We would like to refer to the publication of the Finnish Tax Administration's Grey Economy Information Unit's report 'Grey Economy Control – Statistics 2015', which is available at http://www.vero.fi/download/Grey_Economy_Control_Statistics_2015/%7BD0362584-8A0F-4BE5-AC94-9D667960DCAA%7D/12145. Statistics for 2016 will be available in the spring 2017.

3.3 A statement covering achievements and problems encountered to date

The current prosecution and penalties regime in relation to tax-related offences is viewed as working well with no major problems having been encountered.

3.4 Up-to-date information on the activities of the national supervisory authorities for credit and financial institutions and other obliged entities, including statistics on the number of cases related to the offences covered under item 1, eg. The types of companies involved, the types of offences sanctioned and the value of the penalties/fines issued.

In 2015 there were 1 000 suspicious transaction reports relating to direct and indirect tax crimes as a predicate offence to money laundering. Number of court cases and convictions related to money laundering in 2015 are shown in the chart below:

		Money laundering offences
Number of court cases <u>pending (unresolved) on 1 January 2015</u>		46
Number of <u>incoming</u> court cases in 2015		61
Number of court cases <u>resolved</u> in 2015...	... with a conviction	23
	... with an acquittal	20
	... cases resolved in another way	16
Number of court cases <u>pending (unresolved) on 31 December 2015</u>		48
Number of <u>persons convicted</u> in 2015		63

Number of <u>legal persons</u> <u>convicted</u> in 2015	0
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3.5 The number of ongoing and planned investigations pursuant to the Panama Papers and Bahama leaks

Ongoing or planned investigations pursuant to the Panama Papers and Bahama leaks in Finnish Tax Administration include currently dozens of investigations including full audits, desk audits and third party tax audits for comparative data.

I hope this reply is helpful for your Committee's work. Please do not hesitate to contact if you have any further questions.

Yours sincerely,



Petteri Orpo
Minister of Finance