

## KEY TAX INSIGHTS NEWSLETTER

### NEW PRECEDENT OF FINLAND SUPREME COURT – CRIMINAL PENALTIES FOR UNREPORTED FOREIGN INVESTMENT INCOME

#### Special Update for Finland Residents with Foreign Investment

*We have a global client base and have developed strategic relationships with professionals in other countries over the years. One such strategic relationship is with Anu Nikkanen of Effektiiv Oy. Anu is a tax specialist and has provided the important update below on severe penalties being imposed on unreported foreign investment. If you are a Finnish resident with unreported foreign investment, now is the time to become compliant as the Finnish authorities are actively pursuing those who are not reporting their foreign investment income.*

Administrative penalties, in the form of either fixed late fees or sanctions calculated on a schematic formula (percentages), are most often imposed on taxpayers who fail to comply with their tax obligations in Finland. However, in more severe cases, criminal sanctions may be imposed.



Under the Criminal Tax Code, Chapter 29, Section 1, a person who:

- 1) gives a 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) fails, for the purpose of avoiding tax, 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 (veropetos) to a fine or to imprisonment for at most two years.

If considerable financial benefit is sought by way of the tax fraud, or if the offense is committed in a particularly methodical manner, and the tax fraud is also aggravated when assessed as a whole, a prison sentence of at least four months and at most four years may be imposed. In the Finnish tax practice, when the tax avoided is roughly 20,000 euros, the offense may be deemed as an aggravated tax fraud. Thus, the threshold for sentencing for an aggravated tax fraud is rather low.

**On February 27, 2023**, the Supreme Court of Finland set a new precedent (KKO:2023:15) in their ruling concerning the application of penalties for tax evasion (tax fraud), when private individuals fail to report investment income from foreign sources on their Finnish income tax returns.

In the governing case, married individuals A and B, who were tax residents of Finland, had not reported capital income received from foreign investment assets on their tax returns for the tax years 2013–2015. A and B were clients in a U.S. asset management company and the profits were paid into their U.S. personal accounts. The income consisted of dividends from quoted shares, capital gain distributions, interest income, and sales profits. Neither A nor B had reported the income received from the United States on their respective Finnish tax returns, although A had filed

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a tax return to claim a household deduction. B had not filed any tax return to report income or deductions. The total income tax that would have been due from A and B for tax years 2013–2015 was 18,221 Euros.

Sentencing for tax fraud presupposes intentionality and the Helsinki District Court announced that no evidence of intentional efforts to avoid tax liability could be proved. The Supreme Court overruled the District Court's decision and concluded that A and B knew or should have known that it was probable that income had accrued in the US accounts of the asset management company, and that it should have been declared on the tax return in Finland. Since A and B did not comply with the declaration liability, this resulted in no tax being assessed. As a mitigating factor, the Supreme Court considered that A and B had filed a claim for

corrective adjustment and had voluntarily paid the taxes due. Thus, A and B only received fines, instead of a prison sentence for tax fraud.



The Supreme Court decision (KKO:2023:15) lowers the threshold for tax fraud charges in cases where taxpayers have failed to report on their tax returns, either by mistake or by passivity, investment income from non-Finnish sources. The decision also imposes on taxpayers an elevated obligation to actively search for professional advice related to their Finnish tax obligations. The Supreme Court stated that the erroneous conclusions made by A and B concerning any income received, or the taxability of such income, did not release them from criminal responsibility.

In its ruling, the Supreme Court concluded that an individual's obligation to report foreign source income on their Finnish tax return is self-evident, since the Finnish tax return includes a section specifically for declaring capital income from abroad.

The Supreme Court's ruling may go too far in deducing an individual taxpayer's ability to fully comprehend and accurately comply with the Finnish tax consequences of various non-Finnish investment vehicles and the often complex brokerage reports prepared only in compliance with local filing requirements. Further, if any tax on cross-border investments has already been withheld at source, or if an individual is a so-called dual tax resident, frequently, the taxpayer fails to report the income in the correct country and in the correct manner. Nevertheless, the recent decision (KKO:2023:15) sets a precedent, which means that it will likely direct the future legal practice with respect to tax fraud.

*We would like to thank Anu for her key insights and updates relating to the serious issue of reporting your foreign source income in Finland. If you would like more information about this newsletter or would like to consult with Anu, please contact her at [anu.nikkanen@effektiivfi](mailto:anu.nikkanen@effektiivfi).*

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website: [www.klugcounsel.com](http://www.klugcounsel.com)  
 email: [info@klugcounsel.com](mailto:info@klugcounsel.com)  
 phone number: +1 202-980-4788