# Tax haven and tax avoidance prevention policy for Finnvera's financing operations

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Policy

# 1. Background

Tax havens refer to countries which have low or non-existent taxation and strict bank secrecy, but no international agreements or legislation on transparent ownership. Tax havens can be exploited in tax evasion, and they also form a high risk of money laundering activities. Efforts are made to prevent their illegal use both in Finland and internationally.

Tax havens can be utilised in many ways in both legal and illegal activities. Usually, the use of an enterprise in a tax haven is just a smokescreen in making ownership relations more difficult to detect. In this case, the enterprise's registration state may be a distant island state in the Caribbean, but its bank accounts may still be in Europe, usually in Luxembourg or Switzerland.

Transferring a person's or an enterprise's assets to an enterprise registered in a tax haven does not automatically constitute tax evasion. There may be other personal reasons for this. Assets can be legally transferred to an enterprise in a tax haven, but this yields hardly any taxation benefits if Finland's tax legislation is complied with.

Using an enterprise in a tax haven constitutes tax evasion when a person or enterprise subject to taxation in Finland fails to notify Finnish tax administration of income channelled into an enterprise in a tax haven, for which it should pay taxes to Finland.

In this policy, tax avoidance refers, by reference to EU and international tax standards, to a situation in which individuals or corporations arrange their finances in such a manner that they pay less taxes than they should. Tax avoidance may include practices considered legal as such (e.g., exploiting the loopholes in regulation), but in most cases such arrangements are in a grey area. Many of the structures created for the purpose of tax avoidance are complicated cross-border arrangements based on questionable legal interpretations.

# 2. Regulation related to tax havens and tax avoidance

The European Union is working to improve tax good governance on a global level. It is doing this in order to maximise efforts against tax fraud, tax evasion and tax avoidance. For this purpose, on 5 December 2017 the Council of the European Union approved the EU list of non-cooperative jurisdictions for tax purposes, **the 'blacklist'**. The list includes non-EU countries or territories that have failed to make sufficient commitments in response to EU concerns.

Blacklisted states share the following characteristics:
- There is no efficient exchange of taxpayer information with the authorities of other states. Information about financing and ownership, for instance, is disclosed to an insufficient extent or not at all.
- Taxes are not collected for income and assets of people living abroad or the taxes collected are small and there are tax advantages available specifically for people living abroad
- The state does not apply generally accepted minimum standards of good governance and corporate responsibility.

The EU does not grant financing to a party located in a country that is on the blacklist. As the list is continuously monitored and updated, countries may be added to and removed from the list.

In addition to the blacklist, the EU has a list of countries being monitored. These countries have committed to meeting the EU's taxation-related cooperation obligations by a certain date and, consequently, are monitored by the EU. The states on the grey list are not subject to a financing prohibition but these states involve a higher risk of being added on the blacklist.


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Alongside the EU, the OECD promotes global tax good governance standards and maintains its own **rating list** of jurisdictions regarding the transparency and exchange of information on request. The EU and the OECD act in complementary cooperation in tax matters.

Finnvera's domestic financing utilizes EU financing programs. In accordance with the agreements on EU financing, the customer company (or possible intermediary bank) must not be registered in a country that is on the EU or OECD's list of non-cooperative jurisdictions for tax purposes. In addition to this, the customer company must be committed to constantly complying with the standards regarding the prevention of terrorism and money laundering as well as the prevention of tax evasion and the gray economy, as well as the legislation in force at any given time. Regarding this, the contractual obligations oblige the customer company for the entire duration of the liability, even if the financial product's granting period has already ended.

According to the agreement related to COSME financing, the client enterprise or the bank may not be registered in a state that is on the EU's or the OECD's list of non-cooperative jurisdictions for tax purposes. Furthermore, the client enterprise must be committed to constant compliance with standards related to the prevention of terrorism, money laundering, tax fraud and shadow economy as well as legislation valid at that moment.

Acting as an EU financing intermediary requires the organisation to have rules and procedures in place for assessing the risk of tax evasion as well as a financing prohibition regarding non-cooperative jurisdictions for tax purposes, as far as financial instruments supported by EU funds are concerned. Furthermore, projects financed by EU funds should not contribute to tax avoidance, by reference to EU and international standards[1].

# 3. Cornerstones of Finnvera's tax haven and tax avoidance prevention policy

Finnvera expects that its client enterprises comply with applicable tax regulations and also otherwise strive to apply good practices in tax matters by reporting and paying their taxes diligently and on time and by conducting business specifically for commercial purposes and not for tax evasion purposes.

Finnvera's role as a public provider of financing, on one hand, and as a body channelling EU funds to domestic enterprises, on the other hand, requires Finnvera to ensure that the enterprises it finances do not evade taxes with the aid of tax havens. In this, Finnvera's operations are based on the above-mentioned taxation standards created by the EU and the OECD and the so-called tax haven lists defined in these standards.

Finnvera's practical measures for implementing its tax haven and tax avoidance prevention policy include identifying tax haven connections, as defined by the EU and the OECD, in financing transactions, and requiring client enterprises to have separate tax policies or commitment declarations in these cases to ensure that the enterprise appropriately complies with tax regulation in its operations and in the financing transaction in question.

[1] For more information, see particularly: **Communication from the Commission on new requirements against tax avoidance in EU legislation governing in particular financing and investment operations, C(2018) 1756**


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In addition, domestic enterprises applying for financing from Finnvera are required to be registered in Finland, including registrations in the appropriate Tax Administration taxpayer registers. Registration information is monitored throughout the client relationship.

When acting as an EU financing intermediary, Finnvera implements risk-based measures to manage the risk of tax avoidance, by reference to EU and international tax standards, alongside other means of verifying that the client enterprise is appropriately taxed.

This policy confirms the guidelines and procedures of Finnvera's operating model for 'tax havens' and prevention of tax avoidance.

# 4. To which products and parties does the procedure apply?

Finnvera's tax haven and prevention of tax avoidance policy covers Finnvera's domestic and export financing operations.

The aim of the policy is to manage tax evasion risks related to the client enterprises of Finnvera's domestic financing and the exporter enterprises of export financing.

In addition, the buyer parties involved in export financing transactions are screened for all guarantee products apart from Letter of Credit Guarantee and Bank Risk Guarantees with a term of less than two years. The purpose of this is to manage the tax evasion risk associated with the financing transaction.

# 5. Operating process

The process is based on three phases. In Phase 1, the KYC team is responsible for identifying tax havens. The additional measures for managing the tax avoidance risk required in projects including EU funding are the responsibility of the application processor. In phase 2, the party responsible for the assessment of policies and commitments is the compliance function. The business units are responsible for phase 3 decision-making.

## Phase 1: Identifying the tax haven connection and reducing the tax avoidance risk

When processing financing applications, the following identification procedures are carried out:

- Is the ownership of a *domestic or export financing* client enterprise fully or partially in a jurisdiction that is considered non-cooperative for tax purposes according to the EU or OECD blacklist?
- Is the ownership of an *export financing buyer* fully or partially in a jurisdiction that is considered non-cooperative for tax purposes according to the EU or OECD blacklist?
- In addition, for domestic client enterprises, it is checked that the company is registered in Finland – the Tax Administration's register of taxpayers included – and that the company does not have any tax liabilities. Finnvera also ensures that, in each financing transaction, the client's payments come from the correct account as indicated by the client.

Additional measures for managing tax avoidance risk in projects financed by EU funds:

- Finnvera verifies that the project being financed does not involve aggressive tax planning, i.e., the structure of the project has been put into place for valid commercial reasons (other than tax-related purposes), and the financial flows linked to EU funding are appropriately taxed.

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- Tax avoidance risks associated with financial flows linked to EU funding are minimised by identifying the ultimate beneficial owners of the client and assessing compliance of the project structure with tax regulations to ensure that the financial flows linked to EU funding are effectively taxed.
- When assessing tax avoidance risks, particular attention is paid to general tax evasion practices, such as harmful tax systems, offshore structures or profit-seeking arrangements that do not reflect the company's actual economic activity.

## Phase 2: The client enterprise's tax policy or tax commitment declaration

If the ownership of a domestic or export financing client enterprise or an export financing buyer enterprise is fully or partially in a tax haven, or some other heightened tax avoidance risk has been identified in the financing transaction, in the transaction concerned, Finnvera's client enterprise will be subject to the measures described below.

Finnvera requests the client enterprise to present its tax policy and ensures that the policy includes at least the following commitments according to the OECD Guidelines for Multinational Enterprises[2].

- The enterprise must comply with the applicable tax laws and the OECD Transfer Pricing Guidelines (unless the transfer pricing guidelines conflict with compulsory national regulations).
- The enterprise should not participate in business transactions, the sole or primary purpose of which is to evade or reduce taxes.
- The enterprise must promote openness towards tax authorities.

If the client enterprise lacks or does not want to present a tax policy or the tax policy does not meet the requirements of tax good governance standards listed above, the client enterprise must provide a written tax commitment declaration of its compliance with the above requirements. (For commitment sample, see annex 1).

Each check of a client enterprise's tax policy or an enterprise's commitment declaration is valid for one (1) year. After this, a new check of the tax policy must be conducted or a new commitment declaration must be provided if the enterprise applies for financing from Finnvera and, in accordance with the policy presented, a link to a tax haven jurisdiction is associated with the project or other heightened tax avoidance risk is identified.

## Phase 3: Decision-making

Finnvera does not grant financing to an enterprise subject to a high risk of tax fraud or tax evasion.

Therefore, Finnvera does not grant financing to Finnish enterprises if they are not registered in Finland and they have not been entered into the Finnish Tax Administration's taxpayer registers.

Furthermore, Finnvera cannot grant financing if at least half of the ownership of the domestic enterprise applying for financing is in a jurisdiction blacklisted by the EU.

If a part, but less than half, of the ownership of a Finnish enterprise is in a jurisdiction blacklisted by the EU, the condition for Finnvera's financing is that the company provide a more detailed statement on the location of the ownership. This statement must verify that there is nothing in the relations between the enterprise being financed and the company located in a blacklisted country that would indicate money laundering, terrorist financing or tax evasion.

[2] OECD Guidelines for Multinational Enterprises 2011 Edition. **http://mneguidelines.oecd.org/guidelines/**


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When financing provided by Finnvera includes EU funding, Finnvera cannot grant financing to a company if its ownership is partly or wholly in a jurisdiction blacklisted by the EU.

Furthermore, when channelling EU financing, Finnvera must not finance projects that have been structured to contribute to tax avoidance, by reference to EU and international standards.

It may also be an indication of tax evasion risk if the ownership of the client enterprise, the export financing client enterprise or financing transaction buyer is in a state that is considered non-cooperative in tax matters according to the EU or OECD blacklist and the client enterprise refuses to provide a tax commitment declaration or does not have a separate tax policy. Furthermore, discussions between Finnvera and the client enterprise may give a justified reason for considering there to be a significant risk that the client enterprise does not meet the regulatory taxation requirements.

In addition, Finnvera must take into account the more specific contractual obligations set for EU financing, if any, in its decision-making related to the risk of tax evasion.

If the client enterprise's tax policy meets Finnvera's requirements or if the enterprise provides the above-mentioned written commitment declaration, the financing decision can be made on the same decision-making level as usually. In other cases, the financing decision must be made higher up in the decision-making chain.


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# ATTACHMENT 1. Commitment text

## Customer’s Commitment of Declarion – Tax

Finnvera expects that customer with which Finnvera has a direct or indirect relationship (a “Finnvera Counterparty”) does not engage in aggressive tax planning and that it is transparent in its interactions with tax authorities. Therefore, Finnvera requires that:

- The Finnvera Counterparty complies with all applicable tax laws and regulations and with the OECD Transfer Pricing Guidelines (unless the Guidelines are contrary to local laws or regulations).
- The Finnvera Counterparty does not engage in transactions whose whole or main purpose is to avoid or reduce taxes.
- The Finnvera Counterparty seeks to be transparent in its interactions with tax authorities.

The undersigned, [name of company], hereby confirms that it satisfies and will continue to satisfy the above-mentioned requirements.

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[Signature, customer]


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