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# EVIDENTIARY VALUE OF TAX AUDIT REPORTS IN CRIMINAL PROCEEDINGS IN FINLAND

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# ABSTRACT

In this research, the evaluation of evidence in criminal proceedings is being applied to tax audit reports. The presented research question is; What is the evidentiary value of tax audit reports by Finnish law and is a balance achieved between the rights of the defendant and the state?

This qualitative research uses current legislation and case law as its main sources. The free evidence theory and its two main components, production and evaluation of evidence are utilized, as well as Court cases where the tax audit reports have played key role as evidence.

The problem is that the Government's financial interests, implementation of criminal liability, and the defendant's legal protection are not in balance. According to the research findings, tax audit reports have been found to have a high evidentiary value, and this is problematic, as they are not prepared in accordance with the principles essential for the legal protection of the defendant. I have prepared a solution, which takes into account the financial interest of the Government, the legal protection of the defendant, and the implementation of criminal liability.

The solution is to add a new clause to Chapter 17, Section 25 of the Code of Judicial Procedure, which would prohibit the use of tax audit reports as evidence in a criminal case without the consent of the taxpayer. This would prohibit their use in Courts but not during criminal investigation. Additionally, it would not affect the financial interests of the Government and would provide better legal protection for the defendant.



**Key words:** *Evaluation of evidence, Criminal proceedings, Tax audit reports, Legal protection of the defendant.*

# INTRODUCTION

In my previous bachelor thesis, I went through the problems that arise from the use of tax audit reports as evidence during a criminal investigation and subsequent criminal proceedings. This research concerns the evaluation of the evidentiary value of tax audit reports in criminal proceedings. The research presents the criteria for evaluating evidence and how they are applied in criminal proceedings when tax audit reports are used as evidence. In particular, the evidentiary value that Courts give to tax audit reports plays a key role in this research.

Evaluation of evidence is an important part of the Court's decision-making process in criminal proceedings. It is for the Court to decide the issue of evidence, that is, what must be considered true in the case. There must be a degree of certainty as to the existence of the facts relevant to the decision, that is to say, the evidentiary value of the evidence must be weighed. This step is the evaluation of evidence. In evaluating the sufficiency of the evidence, the Court must take a position on whether there is sufficient evidence for the judgment to be handed down. Meaning, whether the sentencing threshold is exceeded. In practice, the Court takes a position on both the evidentiary value of the evidence and the sufficiency of the evidence at the same time. Standards of the burden of proof determine who bears the risk of an unfavorable decision if the legal facts relevant to the case are not clarified. In criminal cases, the burden of proof is placed on the prosecutor.

The evaluation of the evidence and its outcome must be justified and acceptable to the parties and other persons. According to the law, the evaluation of evidence must be reasoned in the judgment.[1] The obligation to state reasons applies to a disputed fact, that is to say, to cases in which a party denies the existence of a fact. However, the statement of reasons is not always sufficient if you

[1] Criminal Procedure Act (Laki oikeudenkäynistä rikosasioissa 11.7.1997/689) 11 Luku (Chapter) 4.2 §(Section)

consider Court decisions in which tax audit reports have been used as evidence of the guilt of the defendant. The obligation to state reasons ensures that the result is a structured evaluation of the evidence and not merely on the basis of the judge's intuition of the overall impression. The obligation to state reasons is, therefore, one of the guarantees of legal protection for the parties. Reasonings are also important for society. One of the cases of this research attracted widespread public attention because the verdict was based on an erroneous tax audit, which, however, was given evidentiary value in the criminal proceedings.

This topic was chosen because of its relevance to the author’s work on the field of law. The aim of this research paper is to determine the evidentiary value of tax audit reports and provide a solution to the possible problem by answering the following research question. What is the evidentiary value of tax audit reports by Finnish law and is a balance achieved between the rights of the defendant and the state?

The research paper is conducted by using qualitative research by going through legislation and Court cases. The research analyzes the evaluation of tax audit reports evidentiary value through case law. Additionally, a tax audit carried out by the Finnish Tax Administration will be presented and analyzed. Based on the research, a solution to the problem will be presented at the end.

The first chapter is about the Courts evaluation of evidence in criminal proceedings. After this, the evidentiary value of tax audit reports is verified by looking at the official responsibility of tax inspectors. In the same chapter the hypothetical method of evaluating evidence will be used to analyze a case and what effects the possible evidentiary value has in practice. Additionally, witness testimonies and information obtained from third parties will be reviewed. The last chapter offers the basis for the solution and the solution itself.

# 1. PRINCIPLES OF EVALUATION OF EVIDENCE

## 1.1. Free evidence theory

According to free evidence theory, in Finland, both production and evaluation of evidence are free. The later means that the evaluation of the evidence of the Court is not tied, and the Court must take into account all the facts which have come to light in reaching its decision.[2] The Court is therefore not bound by any prior criterion in the evaluation of evidence, and it is entitled and obliged to evaluate freely the evidentiary value which the evidence presented is considered to have.[3] Free evaluation of evidence does not imply arbitrariness instead, the Court must carefully consider, in the light of all the facts of the case, what must be regarded as true.[4] The evaluation must be objective and rational, and contested evidence solutions must be substantiated.[5] Free production of evidence means that the right to present evidence is not limited by criteria of reliability or by a specific form of evidence.[6] Form of evidence refers to the external means by which evidence is brought before the Court.[7] As a general rule, the Court may use all lawfully disclosed evidence. However, a judge may not take their own private information regarding the case into account as evidence.[8]

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[2] Tirkkonen, T. (1949). *Uusi todistuslainsäädäntö: laki oikeudenkäymiskaaren 17 luvun muuttamisesta annettu 29 päivänä heinäkuuta 1948*. (1. painos) Porvoo: WSOY, 23; Lappalainen, J. (2001). *Siviiliprosessioikeus 2*. Helsinki: Lakimiesliiton kustannus, 138.
[3] *Ibid*.
[4] Frände, D., Lappalainen, J., Koulu, R., Niemi-Kiesiläinen, J., Rautio, J., Sihto, J., Virolainen, J. (2003). *Prosessioikeus: Oikeuden perusteokset.* (1. painos) Helsinki: WSOY lakitieto, 465.
[5] Könönen, P. (2006). Tuomitsemiskynnyksestä rikosasiassa. Lappalainen, J., Ojala, T. (toim.), *Kirjoituksia todistusoikeudesta*, (87-98). Helsinki: Helsingin Hovioikeus, 88.
[6] Niskanen, M. (2010). *Oikeusjärjestys osa 3.* (7. painos) Rovaniemi: Lapin yliopisto, 381.
[7] *Ibid*., 378.
[8] Virolainen, J., Martikainen, P. (2010). *Tuomion perusteleminen.* Helsinki: Talentum Oyj, 259.

Production of evidence in Court proceedings most commonly refers to the presentation of evidence in the main proceedings of the Court in order to reconstruct some of the events of the past.[9] As a general rule, the parties' right to present evidence is not restricted. However, there are a number of exceptions to free production of evidence in the Code of Judicial Procedure (Oikeudenkäymiskaari 1.1.1734/4).[10]

Fundamental and human rights affect the forms and evaluation of evidence.[11] For example, when deciding the evidentiary threshold.[12] The evidentiary threshold must be interpreted in a way that optimizes the realization of fundamental rights.[13] The use of evidence obtained in clear or serious breach of the prohibition of use shall be refused or disregarded in the evaluation of the evidence.[14] The defendant must have the opportunity to examine the witness[15]. The idea is to undermine the credibility of the witness testimony directed against the defendant.[16] A guilty verdict should not be based solely or decisively on a witness statement which the defendant has not been able to examine.[17]

The free evaluation of evidence involves three stages. First, the Court must consider what evidence is available under the law as a basis for deciding the case. The evidential value of the evidence presented must then be considered. Finally, it must be evaluated whether the presented evidence is sufficient for the judgment to be given.[18]

It is conceivable that the parties to the proceedings have an interest in obtaining a duly reasoned judgment. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) Article 6 provides the right to a fair trial, which requires a statement of reasons for the judgment. The right to a reasoned decision is also a Constitutional right.[19] It is also conceivable that the transparent and comprehensive reasoning of the judgment shows that the

[9] Pölönen, P. (2003). *Henkilötodistelu rikosprosessissa.* Jyväskylä: Suomalainen Lakimeisyhdistys, 100.
[10] Niskanen, M. (2010), *supra nota 6*, 381.
[11] Jonkka, J. (1998). Eräitä näkökohtia perusoikeuksien toteutumisesta erityisesti rikosprosessissa. *Lakimies* (8/1998), 1255–1270, 1259.
[12] *Ibid*.
[13] *Ibid*.
[14] Pölönen, P. (2003), *supra nota 9,* 205.
[15] Jokela, A. (2018). *Rikosprosessioikeus.* (5. painos) Helsinki: Alma Talent Oy, 628.
[16] Tapanila, A. (2004). *Syytetyn oikeus syyttäjän todistajien kuulemiseen*. Helsinki: Talentum Oyj, 19.
[17] Gardemeister, K. (2012). Kirjatun todistajankertomuksen käyttö näytön arvioinnissa. Ervo, L., Lahti, R., Siro, J. (toim.), *Perus- ja ihmisoikeudet rikosprosessissa*, (77-100). Helsinki: Helsingin Hovioikeus, 88.
[18] Niskanen, M. (2010), *supra nota 6*, 382.
[19] Suomen Perustuslaki 11.6.1999/731, 21 §

Court considered the issues regarding evidence carefully. The reasoning of the judgment must specify the grounds on which the Court has considered the facts of the case to have been proven or not.[20] According to a proposal given by the Government, the statement of reasons must be as detailed as the significance and content of the case require.[21] Due to the obligation to state reasons, the Court must disclose the factors, which in an individual case have influenced the determination of the evidentiary value.[22] The more ambiguous and contentious the case is, the more is required from the reasoning.[23] A discriminatory evaluation of the evidence allows for a more detailed justification for the evaluation of the evidence, thereby reducing intuitive decisions.[24] The statement of reasons must address both the evidentiary value of the evidence and the evaluation of the overall evidence.[25] This means that the Court has to take a position on the issues of the burden of proof and the evidentiary threshold, which determines how strong evidence is required to overcome the burden of proof.[26]

## 1.2. Evaluation of evidence

The Court must consider what is to be considered true in the case.[27] The evidentiary value of individual evidence, as well as the total evidentiary value of multiple pieces of evidence, is left to the discretion of the judge. At the moment, there are virtually no provisions in the law regarding the evidentiary value of evidence.[28] One of the central tasks of criminal proceedings is to find out the truth.[29] The procedure should be able to ensure that the factual premise corresponds to the truth.[30] Since it is a historical course of events, absolute certainty of truth is never available.[31] At

[20] Könönen, P. (2006), *supra nota 5*, 88.
[21] Hallituksen esitys eduskunnalle rikosasioiden oikeudenkäyntimenettelyn uudistamista alioikeuksissa koskevaksi lainsäädännöksi (HE 82/1995 vp), 128.
[22] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007). *Prosessioikeus: Oikeuden perusteokset.* (2. painos) Helsinki WSOYpro, 593.
[23] Frände, D. (1998). Tuomitsemiskynnyksestä suomalaisessa rikosprosessioikeudessa. *Lakimies* (8/1998) 1247–1254, 1247–1248.
[24] Könönen, P. (2006), *supra nota 5*, 88.
[25] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 111.
[26] *Ibid*.
[27] Oikeudenkäymiskaari 1.1.1734/4, 17 Luku 1.2 §
[28] Jonkka, J. (1992). *Rikosprosessioikeuden yleisistä opeista.* (1. painos) Helsinki: Helsingin yliopisto, 82.
[29] *Ibid*., 14.
[30] *Ibid*.
[31] *Ibid*.

least the theoretical uncertainty always remains. It must be considered satisfactory that the factual premise on which the decision is based on is as close to the truth as possible.[32] So the requirement of truth does not mean absolute truth, but anything that can be expressed in terms of probability or certainty is sufficient.[33]

The legislation sets a condition for the evaluation of evidence. According to the Code of Judicial Procedure, the Court must carefully consider the evidentiary value of the presented facts.[34] In the evaluation of evidence, the judge evaluates the evidence subjectively, and the evaluation cannot be based on arbitrariness alone, but the judge's personal understanding must be supported by the evidence.[35] Although the Court is free to evaluate the evidentiary value of the evidence, and the personal conviction of the judge can never be completely ruled out, the outcome of the evaluation of the evidence must be rational and objectively justified.[36]

Evaluation of evidence is the evaluation of the evidentiary value of the presented evidence. The evaluation of evidence focuses on the theme that is subject to the production of evidence (issues being proved).[37] The Court considers whether the issue being proved can be held reliably under the produced evidence.[38] This requires that both individual evidence and the overall evidence are given evidentiary value.[39] The evaluation of the evidence examines the evidence both comprehensively and separately.[40] The Court first considers the evidence separately, that is, it decides the question of how likely a particular evidentiary fact is to prove the stance of the prosecution or the defense.[41] Once all the evidence presented by the prosecutor has been individually evaluated, it must be weighed together.[42] Finally, the evaluation of the evidence combines the presented main and counter-evidence.[43] The main evidence is the evidence presented by the party who bears the burden of proof.[44] In criminal cases, therefore, the prosecutor generally

[32] *Ibid*.
[33] Frände, D. (1998), *supra nota 23*, 1248.
[34] Oikeudenkäymiskaari 1.1.1734/4, 17 Luku 1.2 §
[35] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 573-574.
[36] Niskanen, M. (2010), *supra nota 6*, 383.
[37] Saranpää, T. (2010). *Näyttöenemmyysperiaate riita-asiassa.* Helsinki: Suomalainen Lakimiesyhdistys, 383.
[38] Niskanen, M. (2010), *supra nota 6*, 382.
[39] *Ibid*.
[40] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 593.
[41] *Ibid*.
[42] *Ibid*.
[43] Virolainen, J., Pölönen, P. (2003). *Rikosprosessioikeus 1: Rikosprosessin perusteet.* Helsinki: Talentum Media, 427.
[44] Virolainen, J., Martikainen, P. (2010), *supra nota 8*, 261.

presents the main evidence.[45] Counter-evidence means evidence aimed at overturning the evidentiary value of the prosecutor's main evidence.[46] In order to justify the evaluation of evidence with sufficient precision, a detailed structuring of the evaluation of the evidence is necessary.[47]

Three logical rules can be used to help solve the evidentiary value.[48] First, evidence supporting each other have a greater evidentiary value than individual evidence alone; second, the chains of evidence have a lower evidentiary value than direct evidence; third, in the event that the evidence speaks against each other and a counteraction situation arises, the evidentiary value is lower than in a situation where there is no counteract effect.[49] So there can be independent pieces of evidence providing proof of the same fact. Evidence can also be interdependent in a chain, with the endpoint of the chain being the issue being proved.[50]

- Each link in the chain is an evidentiary fact for the next link, and at the same time, an issue being proved for the previous link.
- It is generally thought that the longer the chain of evidence, the lower the evidentiary value of the evidence.
- It is also considered that the evidentiary value of a chain cannot be higher than the evidentiary value of its weakest link.

If the evidence speaks against each other, it is called a counteraction.[51] There are three types of counteraction situations in the evaluation of evidence.[52]

- First, is a situation where it is attempted to demonstrate the uncertainty or outright impossibility of the issue being proved.
- Second counteraction situation is where an alternative course of events is presented to undermine the course of events presented by the opposing party.
- Third, an attempt may be made to undermine the material significance of the evidence supporting the issue.

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[45] *Ibid*.
[46] *Ibid*.
[47] Virolainen, J., Pölönen, P. (2003), *supra nota 43*, 427.
[48] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22,* 593.
[49] *Ibid*.
[50] Uusitalo, K. (2013). Näytönarviointi ja näyttökynnys lapsiin kohdistuneissa väkivaltaja seksuaalirikoksissa. Mikkola, T., Konttinen, E. (toim.), *Lapsenasema kansainvälistyvässä maailmassa*, (11-71). Helsinki: Helsingin Hovioikeus, 16.
[51] *Ibid*.
[52] *Ibid*.

## 1.3. Sufficiency of evidence

One of the problems, when the evidence is being evaluated, is the question of the sufficiency of the evidence. The sufficiency evaluation concerns the issue being proved.[53] The judge takes a position on whether the overall evidence supports with sufficient probability the final issue being proved.[54] There is a link between the burden of proof and the sufficiency of the evidence, as the Court cannot leave the case undecided on the grounds that it has remained unclear.[55] The norms for the burden of proof are important because the Court has a duty to make the ruling, no matter how reliably the truth has been established. The burden of proof is objective, as the Court must take into account all the facts lawfully raised in the case when evaluating the evidence. The burden of proof and the sufficiency of the evidence form a whole, as the evidentiary threshold determines how heavy the burden of proof is.[56]

The party who bears the burden of proof in the proceedings bears the risk that the legal fact, supporting the issue being proved, will be established.[57] Thus, if the evidence presented is not sufficient to prove the charge in criminal proceedings, the charge is dismissed because the defendant must still be presumed innocent.[58] The burden of proof of the prosecutor applies to all the elements of an offence, so they have to provide sufficient evidence of the unlawfulness of the act, the guilt of the defendant, the intent or negligence, the grounds for sentencing, and the grounds for forgiveness and justification.[59] The division of the burden of proof is clear in criminal proceedings, where the gathering and presentation of evidence is the responsibility of the prosecutor.[60] The presumption of innocence enshrined in human rights treaties like the ECHR Article 6 Section 2, and UN General Assembly International Covenant on Civil and Political

[53] Pölönen, P. (2003), *supra nota 9*, 140
[54] *Ibid*.
[55] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 575.
[56] Niskanen, M. (2010), *supra nota 6*, 384.
[57] Sahavirta, R. (2006). Käännetty todistustaakka rikosprosessissa. Lappalainen, J., Ojala, T. (toim.), *Kirjoituksia todistusoikeudesta*, (225-241). Helsinki: Helsingin Hovioikeus, 229.
[58] Niskanen, M. (2010), *supra nota 6*, 384.
[59] Sahavirta, R. (2006), *supra nota 57*, 226.
[60] Tolvanen, M. (2006). Asianosaisten ja tuomioistuimen roolit todistelussa. *Lakimies* (7-8/2006), 1325-1343, 1339.

Rights(ICCPR) Part 3 Article 14 Section 2 has contributed to emphasizing the burden of proof on the prosecutor.[61] According to the presumption of innocence, the suspected person should be treated and presumed not guilty until proven otherwise by a competent Court.[62] In addition to the burden on proof, the presumption of innocence also presupposes that the criminal case is heard by an impartial Court, which seeking substantive truth, adopting the principle of in dubio pro reo in questions that remain unclear, and that the defendant has the right to present counter-evidence or remain passive.[63] The Court may repeal the presumption of innocence only after the prosecutor has presented such convincing evidence under the burden of proof that they can be considered without reasonable doubt to be true.[64] The presumption of innocence thus requires a high evidentiary threshold, which ensures that innocent people are not convicted.[65] If the Court finds that there is insufficient evidence to exceed the sentencing threshold, the burden of proof will result in the prosecutor bearing the consequence in the criminal proceedings.[66] In the legal literature, it has been considered whether the burden of proof should be shifted to the defendant in some situations due to the difficulty of proving some types of crime, such as financial crimes.[67] The reversed burden of proof is widely viewed negatively, and the solution to the problems of evidence production is to add new resources and powers to the criminal investigation of certain types of crime.[68]

The primary duty of the parties is to bring evidence to Court. The Court may also obtain evidence by itself if it deems it necessary.[69] In practice, the Court rarely exercises its right to obtain evidence in criminal proceedings. According to accusatorial thinking, the Court should refrain from producing evidence which would be harmful to the defendant.[70] In the accusatorial method, prosecution and the gathering of evidence, as well as the presentation of evidence, are most often

[61] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 576.
[62] Tolvanen, M. (2013). Näytön hankkiminen ja arviointi veroprosessissa ja rikosprosessissa-yhtäläisyyksiä ja eroja. Mieho, M. (toim.), *Juhlakirja Matti Myrsky 60 vuotta* (347-360). Edita Publishing, 352.
[63] Jääskeläinen, P. (1997). *Syyttäjä tuomarina: Rikos- ja prosessioikeudellinen tutkimus seuraamusluonteisen syyttämättä jättämisen ja rangaistusmääräysmenettelyn ehdoista Suomessa ja Ruotsissa.* (Doctoral Dissertation) Helsingin yliopisto, Helsinki, 210–211; Lehtonen, A. (2003). Todistustaakka ja verorikokset. Nuutila, A. M. (toim.), *Oikeuden tavoitteet ja menetelmät. Muistokirja Hannu Tapani Klamille.* (257-274). Turku: Turun yliopiston oikeustieteellinen tiedekunta, 265–266.
[64] Sahavirta, R. (2006), *supra nota 57*, 232
[65] *Ibid*.
[66] *Ibid*., 233.
[67] *Ibid*., 226.
[68] *Ibid*., 240.
[69] Oikeudenkäymiskaari 1.1.1734/4, 17 Luku 7§
[70] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 576.

the responsibility of the prosecutor.[71] The Court has to decide the case based on the claims presented by the parties, meaning that the judgement cannot be against the claims.[72] Similarly, it follows from the presumption of innocence and the principle of favoring the defense, that a Court should not, of its own motion, order the production of evidence necessary to prove a charge.[73] This supports the Court's position as an impartial adjudicator. It is accepted, if not required, that in criminal proceedings, relevant additional information must be obtained by the Court if there is even some possibility that it will be in the defendant's favor.[74] A prerequisite for this is that, without further investigation, there is a risk that the defendant will be sentenced on the basis of other evidence.[75] The position is justified by the fact that convicting an innocent is a worse thing than letting the real culprit free in proceedings that have not been purely accusatorial.[76]

Like the presumption of innocence, the right against self-incrimination is a vital part of the suspected persons rights. The right against self-incrimination is strongly connected to the presumption of innocence, as it would be pointless to have such a right if it could be assumed that the defendant is always guilty.[77] This right provides that the suspected person does not need to self-incriminate themselves by providing any information that could be used against them in the Court of law.[78] The right against self-incrimination can also be found from multiple international agreements like ICCPR Part 3 Article 14 Section 3(g) and the Finnish Criminal Investigation Act (Esitutkintalaki 22.7.2011/805) Chapter 4 Section 3.

The right against self-incrimination can also be extended to cover the suspected person's closest relatives.[79] This means that if a person mentioned in the Code of Judicial Procedure Chapter 17 Section 17 informs the Court of their unwillingness to testify, they can decide to do so. If a close relative of the suspect has given their testimony during the criminal investigation but later during the proceedings invokes their right not to testify, their prior testimony cannot be used in the Court.

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[71] Jokela, A. (2012). *Oikeudenkäynnin asianosaiset ja valmistelu: Oikeudenkäynti* 2. (3. painos) Helsinki: Talentum Oyj, 9-12.
[72] Laki oikeudenkäynistä rikosasioissa 11.7.1997/689 11 Luku 3 §
[73] Jokela, A. (2008). *Rikosprosessi.* (4. painos) Helsinki: Talentum Oyj, 378.
[74] Vuorenpää, M. (2007). *Syyttäjän tehtävät: erityisesti silmällä pitäen rikoslain yleisestävää vaikutusta.* Vammala: Suomalainen Lakimiesyhdidtys, 62-63.
[75] Jokela, A. (2008), *supra nota 73*, 471.
[76] *Ibid*.
[77] *Ibid*., 25-26, 32-33.
[78] Sahavirta, R. (2006), *supra nota 57*, 235.
[79] Frände, D., Helenius, D., Hietanen Kunwald, P., Hupli, T., Koulu, R., Lappalainen, J., Lindfors, H., Niemi, J., Rautio, J., Saranpää, T., Turunen, S., Virolainen, J., Vuorenpää, M. (2017). *Prosessioikeus: Oikeuden perusteokset*. (5. painos) Helsinki: Alma Talent, 651.

This includes situations where the person who has conducted the criminal investigation is heard as a witness regarding the testimony of the relative.[80] Chapter 17 Sections 10-23 deal with the obligation or right to refuse to testify.

Another important right that bears meaning for this research and is derived from the right against self-incrimination is the suspect's right not to remain truthful, otherwise known as the right to remain silent.[81] This right concerns only the suspected person. Witnesses and the plaintiff must remain in the truth.[82] What this means is that in criminal proceedings, the defendant can choose to remain utterly silent, and they cannot be obliged to provide any answers to presented questions, nor can they be required to produce any evidence regarding the case.[83] The passiveness attached to the right to remain silent does not cover all the situations during the criminal proceedings, like DNA testing or providing fingerprints.[84] Some of the coercive measures also limit the right to remain silent.[85]

If the defendant does not want to remain passive, they may seek to produce alternative evidence that precedes or excludes the prosecutor's evidence.[86] They may also try to undermine the evidentiary value of the prosecutor's evidence. Especially when the prosecutor has provided sufficient evidence to substantiate their charge to convince the judge that the sentencing threshold has been exceeded, the defendant should seek to undermine the evidentiary value of this evidence. This actual shift of the burden of proof has been called, among other things, a secondary or a false burden of proof.[87] The defendant then seeks in practice to undermine the prosecutor's main evidence with their own counter-evidence by weakening its evidentiary value so that the sentencing threshold is no longer exceeded, and the burden of proof is returned to the prosecutor.[88]. In some situations, it may be necessary for the defendant to produce evidence in order to be

[80] *Ibid.,* 651.
[81] *Ibid*., 873.
[82] *Ibid.,* 685.
[83] Nieminen, A. (2016). Viivästymishyvitys ja oikeudenkäynnin viivästymisen arvioinnin elementit rikosprosessissa. Koponen, P., Lahti, R., Konttinen-Di Nardo, E. (toim.), *Kirjoituksia rikosprosessioikeudesta*, (297-342). Helsinki: Helsingin Hovioikeus, 322; Lilja, J. (2016). Hyödyntämiskiellosta – erityisesti oikeudenkäymiskaaren 17 luvun uudistus. Koponen, P., Lahti, R., Konttinen-Di Nardo, E. (toim.), *Kirjoituksia rikosprosessioikeudesta*, (277-298). Helsinki: Helsingin Hovioikeus, 283.
[84] Kekki, K. (2016). Itsekriminointisuoja esitutkinnassa. Koponen, P., Lahti, R., Konttinen-Di Nardo, E. (toim.), *Kirjoituksia rikosprosessioikeudesta*, (103-128). Helsinki: Helsingin Hovioikeus, 112.
[85] Sahavirta, R. (2006), *supra nota 57*, 235
[86] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 590.
[87] Sahavirta, R. (2006), *supra nota 57*, 238.
[88] *Ibid*.

released from the impending conviction. Such an example could be the defendant's use of funds.[89] In practice, the defendant must present counter-evidence if they wish to undermine the prosecutor's main evidence.[90]

## 1.4. Evidentiary threshold

The evidentiary threshold can be defined as the evidentiary probability that must be reached before the issue being proved can be considered proven.[91] The evidentiary threshold, also used as the sentencing threshold and the sufficiency of evidence is exceeded in criminal cases when a certain probability of guilt is reached.[92] The evidentiary threshold is a rule of law that indicates the standard of proof required in a criminal conviction.[93] In accordance with the in dubio pro reo principle and the rules on the burden of proof, cases which remain unclear and below the evidentiary threshold must be decided in favor of the defendant. Meaning that in criminal cases, the sentence can be given when the prosecutor has provided such convincing evidence of all the facts of the case that the Court can consider those facts to be true.[94] If the Court is not convinced of the defendant's guilt, it must dismiss the charge.[95] Similarly, unless the Court is satisfied that certain facts are true, those facts cannot be regarded as established. It has been presented that the judge's personal conviction alone is not enough to render a guilty verdict.[96] In addition to the judge's personal conviction, based on the presented evidence, there must be no reasonable doubt of the guilt.[97] The Court must also dismiss the charge on the ground that, in the light of the evidence, reasonable doubt of guilt remains, even if the judge is personally convinced that the defendant is guilty.[98]

[89] *Ibid*., 228.
[90] *Ibid*., 239.
[91] Pölönen, P. (2003), *supra nota 9*, 140
[92] Könönen, P. (2006), *supra nota 5*, 87.
[93] Virolainen, J., Pölönen, P. (2003), *supra nota 43*, 427.
[94] Könönen, P. (2006), *supra nota 5*, 87.
[95] Frände, D., Helenius, D., Hietanen Kunwald, P., Hupli, T., Koulu, R., Lappalainen, J., Lindfors, H., Niemi, J., Rautio, J., Saranpää, T., Turunen, S., Virolainen, J., Vuorenpää, M. (2017), *supra nota 79*, 734
[96] Saranpää, T. (2010), *supra nota 37*, 114.
[97] *Ibid*.
[98] *Ibid*.

The goals of the criminal proceedings affect the determination of the evidentiary threshold. When establishing the evidentiary threshold, the fundamental rights of the defendant must be taken into account. In Finland, it is thought that convicting an innocent is more socially damaging than acquitting the real culprit.[99] The evidentiary threshold is related to accepting the risk of a wrong decision.[100] A high evidentiary threshold is required in criminal proceedings because a wrong guilty verdict is a much more detrimental option for an individual than a wrong verdict of not guilty for the society.[101] There are two important interests at stake in determining the evidentiary threshold. The legal protection of the defendant and the requirement to enforce criminal liability.[102]

The Code of Judicial Procedure does not state what evidence is sufficient for a judgment to be given. The sentencing threshold is, therefore not, explicitly stated in the law. As stated before, it is not enough that the judge feels that the defendant is guilty if there remains reasonable doubt that they are not.[103] The judge's personal conviction is an inadequate definition of guilt because it places too much emphasis on subjectivity.[104] According to the concept of functional conviction, a judge is convinced of the guilt of the defendant when reasonable doubt has been ruled out.[105] On the other hand, it has been stated in the legal literature that the decision of the judge is intuitively based on the overall judgement, so it is ultimately a matter of the judge's subjective belief.[106]

The sentencing threshold defined by the law *''there is no reasonable doubt regarding the guilt of the defendant''* guarantees the legal protection of the defendant when the Court openly states in its reasoning what led to the conviction and why there is no reasonable doubt of guilt.[107] Following this threshold, the principle in dubio pro reo is fulfilled because the case must be dismissed if there remains any doubt regarding the guilt of the defendant. When this threshold is used, and the reasoning is comprehensive, the defendant becomes aware of the weaknesses of their claims,

[99] HE 82/1995, *supra nota 21,* 83.
[100] Jonkka, J. (1992), *supra nota 28*, 104.
[101] *Ibid*.
[102] Jokela, A. (2008), *supra nota 73*, 8.
[103] Frände, D. (1998), *supra nota 23,* 1253.
[104] Heinonen, O. (1980). Täysi näyttö ja tuomitsemiskynnys rikosasioissa. *Lakimies* (1/1980) 321-336, 330.
[105] Frände, D. (1998), *supra nota 23*, 1253.
[106]Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 574.
[107] *Ibid*., 592.

which is important for the possible appeal.[108] Similarly, the prosecutor also receives information if the charge is dismissed.[109]

In practice, the evaluation of the evidence should consider which alternative facts should be ruled out. Once these facts have been identified, they must be excluded. The exclusion may be necessary if the Court documents do not support the fact or the fact is altogether implausible. The exclusion of alternative facts is central to the hypothetical method supported in the legal literature.[110] The hypothetical method helps to identify the facts which were proven beyond a reasonable doubt in the reasonings of the judgement. This phrase should not only be added to the end of the judgment without further consideration, but the statement of reasons should state the basis for that conclusion.[111]

[108] Heinonen, O. (1980), *supra nota 104*, 335.
[109] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 592.
[110] Könönen, P. (2006), *supra nota 5*, 97.
[111] Virolainen, J., Martikainen, P. (2010), *supra nota 8*, 293.

# 2. EVIDENTIARY VALUE OF TAX AUDIT REPORTS

## 2.1. Official accountability of tax inspectors

Tax audits are always carried out by Tax Administration officials, called tax inspectors, who are specially assigned to perform this task. Because the Tax Administration is part of the public sphere, naturally, tax inspectors are regarded as public authorities, and as such, their actions are governed by the law.[112] According to the Finnish Constitution Chapter 10 Section 118, all civil servants are responsible for the lawfulness of their official actions, and as tax audits are administrative actions, the official accountability of civil servants extends to tax inspectors. If, as a result of the actions of the tax inspector, someone's rights have been violated, that person has the right to demand the tax official to be sentenced to a punishment and hold the Tax Administration liable for damages. The official accountability and the fact that tax inspectors are civil servants means that they have a strict liability for their actions and that these actions should be impartial and trustworthy.[113] Because of this strict liability, testimonies of public officials are commonly valued as essential evidence.[114]

The majority of tax offenses would not be found out without tax audits. As a matter of fact, most of them are reported based on tax audit findings.[115] Because of the nature of financial crimes, it might be difficult to find evidence against the defendant. This is why the tax inspector is often heard as a witness in crimes were the tax audit report is used as an evidence.

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[112] Husa, J, Pohjolainen, T. (2014). Julkisen vallan oikeudelliset perusteet. Johdatus julkisoikeuteen. (4. painos) Talentum Media Oy, 66.
[113] *Ibid*., 308.
[114] Helsingin käräjäoikeus 24.1.2019, tuomio 19/103547. Case will be discussed in more detail later.
[115] Uudenmaan verovirasto. Harmaan talouden projektiryhmän loppuraportti. Valtionvarainministeriön työryhmämuistioita 1999/1, 41.

When the evidentiary value of tax audit reports is being evaluated, it should be important to distinguish the legal facts from the assumptions of the inspector. Tax audit reports contain both legal facts and assumptions done by the tax inspector.[116] The differentiation between these two can sometimes be problematic in Court proceedings. This creates a problem, as when the Courts are evaluating the presented evidence, only legal facts are relevant in criminal proceedings.[117] What makes this particularly challenging is because a tax audit report is compiled by a public official under the official accountability, and as such, the contents of the report hold evidentiary value.[118] To avoid any inconveniences when distinguishing between legal facts and assumptions, all the information gathered during the audit procedure should be recorded clearly and systematically, for example, with reference numbers, so that it is later easier to connect where or from whom the information for the report came from.[119] Additionally, all the findings done by the inspector should be separated from all the other information, like information from third parties such as workers of the audited company. If this separate information from the third parties is needed for the audit report, it should be identified based on who and in which position gave the information. Identifying this person is important, as they could be heard later during Court proceedings if needed.[120]

The danger presents itself in a situation where the tax audit report is being presented as evidence, and the inspector's assumptions are overly relied upon, which again creates a situation where the legal facts and these assumptions are viewed as a whole in a way that proof is required to repeal the assumptions.[121]

A case where the evidentiary value of public officials' testimony and how the defendant had to provide proof to repeal the charges was presented in the District Court of Helsinki[122] and later

[116] Myrsky, M, Linnakangas, E. (2007). Verotusmenettely ja muutoksenhaku. (5. painos) Talentum Media Oy, 144.
[117] Sahavirta, R. (2006), *supra nota 57*, 237; Nurmi, M.L. (2006) Teemalähtöinen todisteiden kartoitus riita-asioissa. Lappalainen, J., Ojala, T. (toim.), *Kirjoituksia todistusoikeudesta*, (135-151). Helsinki: Helsingin Hovioikeus, 136-137.
[118] Passila, K. (2011). Verotarkastuskertomus - asiantuntijalausunto vai yksityisoikeudellinen lausunto rikosoikeudenkäynnissä. Lahti, R., Siro, J. (toim.), *Asiantuntemustieto ja asiantuntijat oikeudessa*, (171-194). Helsinki: Helsingin Hovioikeus, 177.
[119] Uudenmaan verovirasto. (1999), *supra nota 115*, 39.
[120] Pitkäranta, A-M. (2004). *Näytöstä ja sen arvioinnista tuloverotuksessa.* (Doctoral Dissertation) Turun yliopisto Oikeustieteellinen tiedekunta, Turku, 146.
[121] Passila, K. (2011), *supra nota 118*, 178.
[122] Helsingin käräjäoikeus 24.1.2019, tuomio 19/103547

appealed to the Appeal Court of Helsinki[123]. In the case, the defendant was a 70-year-old truck driver, who was stopped by the police shortly after she had picked up a sea container from the harbor. The police stopped her during a routine inspection and noticed that the container was not appropriately secured to the truck and that all the locks were open.

In the District Court, the prosecutor accused that the defendant had intentionally or by gross negligence violated the Road Traffic Act (Tieliikennelaki 729/2018) by not securing the trucks load properly and making sure that it would not fall and endanger others, damage property or cause any other similar damages. The defendant denied the charges and argued that the load was properly secured according to the required standards. She also stated that even though some of the locks on the trailer were open, the load was properly secured as the container only had four lock slots, and all of those were used.

During the Court proceedings, one of the police officers was questioned and heard as a witness. The heard police officer was the one who checked the locks of the trailer and noticed that all of them were open. According to the police, all 12 locks in the container were fully open. He took pictures of them and also asked his co-worker to check the situation. In his testimony, the police officer said that he was "one hundred percent sure" that the locks had been open. He said that the locks in the middle of the trailer should also have been closed. The police officer justified his belief by stating that because the trailer had such locks attached to it, they should be closed as well. However, he could not say if there were places for those middle locks in the container. To further support his claim, the police officer stated that he had acted based on the instructions given to the police and that the other officers present shared his opinion.

The defendant stated that she had been a professional trucker for 50 years. According to her testimony, the container is secured with pins on the locks in a way that the 'wings' on the pins are pointing sideways. A pin that is sideways shows that the container is locked. The defendant explained that the semi-trailer had seven locks on each side, but the container was only secured to them at the four corners while the other locks remained open. This, according to the defendant, is because the container only has four lock slots. The defendant stated that it was not a matter of opinion because there were no more than four anchorage points in the container.

[123] Helsingin hovioikeus 04.10.2019, tuomio 19/142190

Because the question was about whether the container was appropriately secured to the trailer, the District Court, for its part, expressly acknowledged that it did not have the professional expertise to evaluate the locking mechanisms, and for that part, had to rely on the presented witness testimonies.

The Court held each parties' testimonies credible. However, the Court placed more weight on the testimony of the police officer because he had been conducting his official duty while performing the investigation. In addition, the police had given the witness affirmation in Court. The defendant, on the other hand, because of her position, was without the obligation to remain truthful in her testimony. The Court evaluated the credibility of the defendant's testimony with the following notions. ‘’The defendant has a long career as a truck driver. She has also been driving the vehicle in question and is probably an expert in its use. Her report has been consistent, detailed, and credible. However, the defendant's own perception can only be of limited importance in traffic safety matters compared to the police.’’

The District Court's judgement was that the defendant is guilty of jeopardizing road safety. Based on the testimony of the police officer, the Court believed that the locks on the trailer and container were left open, and thus the container was at risk of falling into the road.

So, as can be seen from this ruling, the public official's testimony was given the evidentiary value when compared to the defendant's testimony. The defendant, in this case, appealed the decision of the District Court, and the case was finally resolved in the Court of Appeal.

In the Court of Appeal[124], the defendant presented an expert witness to prove that the way she had secured the container to the trailer was the appropriate way to do it. The heard witness was an engineer who had experience, especially regarding heavy-duty traffic. According to the expert witnesses' statement, there are multiple ways to secure the container to the trailer. Furthermore, different trailers have different styles of locks. The way the defendant had secured the container was an acceptable way of doing so as it prevented the container from moving horizontally. This was enough, as restricting the vertical movement of the container would be necessary only at sea and not on the roads.

[124] Helsingin hovioikeus 04.10.2019, tuomio 19/142190

Based on the expert witnesses' testimony, the Court of Appeal decided to overturn the lower instances ruling and acquit the defendant of the charges.

In this case, the defendant had to present evidence to repeal the charges that were based on the testimony given by a public official. From this, we can derive that a public official's testimony is trusted in the Court proceedings, and counter-evidence might be needed to repeal the charges. It can be seen from the Courts reasonings that the testimony given by the defendant in the District Court could not be given the same evidentiary value as the testimony of the police officer. The Court stated this even though it acknowledged the defendant's professionalism regarding heavy-duty traffic. So, in some instances, the defendant might be more knowledgeable, based on their professional competence, than the public official presenting the opposing view, but because they lack the obligation to remain truthful, their testimony cannot be held reliable.

When this is applied to the testimonies of tax inspectors, we can see a problem occurring, if their testimonies are given evidentiary value based on their position. This practice is a real threat to the legal protection of the suspected person in criminal proceedings. Regarding this, whether it is taxation or an administrative matter, the decision-makers should not give any evidentiary value on the assumptions of the tax inspector but instead, based on the presented evidence, make their conclusions.[125] Just to point out, Kalevi Passila notes in his article that based on their professional competence, tax inspectors have a significantly better understanding of taxational matters, such as detecting accounting errors than administrative lawyers, so the opinions of tax inspectors for this part should be taken into account and at least considered.[126] He concludes that this, however, does not mean that these opinions and assumptions should be considered as straight facts without any critique until proven otherwise.[127]

Tax audit reports are usually used as evidence in cases regarding financial crimes, such as tax or bookkeeping frauds. So, in Court, the prosecutor's issue being proved is the alleged financial crime. The prosecutor uses the tax audit report as evidence of what has happened. Usually, tax inspectors assume that based on 'something', 'something else' has happened, and this same deduction is later used by the prosecutor to fulfill the requirements of the burden of proof and sentencing threshold. As stated before, a chain of evidence has a lower evidentiary value than

[125] Pitkäranta, A-M. (2004). *supra nota 120*, 147.
[126] Passila, K. (2011), *supra nota 118*, 178.
[127] *Ibid.,* 178.

direct evidence has. The conclusions of the tax inspector are based on the above-mentioned deduction and usually form a chain-like pattern. When deciding a case, the Courts should decide what has been proven and shown to be true based on the presented evidence. This is problematic when discussing about cases involving tax audit reports as evidence. In their decision-making, the Courts should take into account all the evidence, for and against the defendant. However, this is not always the case as the evidentiary value given to public official's testimony is so strong that it even supersedes direct evidence produced by the defendant. The trust that the Court's place on the testimonies of tax inspectors can be seen from a case that was first presented in the District Court of Helsinki[128] and later appeared in the Court of Appeal of Helsinki.[129]

The case was about an Estonian construction company which had some of its income generated from assignments carried out in Estonia, but most of the company's income came from work-based assignments in Finland. The company was VAT liable in Estonia but had registered, reported, and paid VAT also in Finland based on the assignments carried out there. The primary bookkeeping of the company was done in Estonia, but because it was also liable for VAT in Finland, it had hired a Finnish bookkeeping company to do the accounting regarding the VAT generated from there.

Finnish Tax Administration organized a tax audit to the company and audited the bookkeeping materials done by the Finnish bookkeeping company. According to the tax audit report, the company had made profit that it had not disclosed in its tax declaration. This assumption was made because the company's taxable income reported in its tax declaration was considerably lower than what the tax inspector calculated it to be. The company had only income registered in its books, and the expenses were considerably smaller. From this, the inspector concluded in the tax audit report that the company had deliberately tried to hide the profits made by the company. As a result, the owner of the company was charged with aggravated tax fraud.

During the Court proceedings, the tax officials argued that the company had disclosed incorrect information in their tax declaration and, by doing so, tried to gain substantial tax benefits. According to the defendant, the company had not disclosed incorrect information because the tax audit was made based on the company's VAT bookkeeping done in Finland, and the tax inspector did not include in their report the company's financial statement that was done in Estonia. To prove this argument, the defendant provided as evidence the company's Estonian financial statement that

[128] Helsingin käräjäoikeus 25.09.2015, tuomio 15/139882
[129] Helsingin hovioikeus 06.04.2017, tuomio 17/113271

stated the profits generated by the company and that the turnover was divided between assignments done in Finland and Estonia. From the financial statement, it could have been derived that the expenses of the company were present in the bookkeeping done in Estonia.

The District Court of Helsinki and the Court of Appeal of Helsinki, both in their judgements only commented on the tax audit report and did not pay any respect to the financial statement provided by the defendant. The judgement of the District Court was that the defendant was sentenced to conditional imprisonment for aggravated tax fraud, and the Court of Appeal did not change the lower Court's decision. Both of the judgements were reasoned, but why the financial statement was disregarded as evidence, was not mentioned.

In their judgements both of the Courts failed to provide an answer to why the financial statement was not trusted as evidence and why instead, the tax audit report was given the higher evidentiary value. Unfortunately, public officials report done under the official accountability has a strong evidentiary value in the eyes of the Finnish Court system, which lowers the legal protection of the defendant.[130]

This Court decision shows that sometimes the tax inspectors' assumptions presented in the audit report are taken as facts when the overall situation of the case is being evaluated. This forces the defendant to present counter-evidence against these assumptions regarded as facts, and even if proof to repeal these assumptions is provided, the Court may decide to disregard this evidence based on its credibility, and instead favor the tax inspectors' view on the case.

Because the Courts have the obligation to objectively evaluate the presented evidence, for and against the defendant, they could have easily calculated the company’s actual turnover based on the financial statement disclosed by the defendant. Instead of doing this, the Court trusted that the tax inspector’s view was correct. What kind of evidence is needed to repeal the assumptions of the tax inspectors? This case proves that tax inspectors’ testimonies are trusted during criminal proceedings, and this is because of their official accountability and professional competence. The accountability for their actions that the tax inspectors have, has given the Courts the 'justification' to trust their findings over the evidence provided by the defendant.

[130] Mariapori, L. (2016). *Yrittäjien oikeusturva ja harkintavallan ulottuvuus verotarkastuskertomuksissa*. Vaasa: Vaasan yliopisto, 291-294.

### 2.1.1. Case and the hypothetical method of evaluating evidence

Another similar case, where the tax inspector's assumptions were taken as facts, was presented in the District Court of Helsinki in 2019.[131] Additionally, in this case, the tax inspector's testimony implicated a third party, who was also held criminally liable based on the assumptions of the inspector.

In this case, the main defendant Y, was the managing director of a real estate agency accused of aggravated debtor dishonesty and aggravated accounting offense. In addition to defendant Y, person X, who had a business relationship with Y was accused of aiding and abetting both crimes.

According to the prosecutor, Y had paid X's company a consultancy fee of 200.000€ for a work, which, according to the tax audit report, had never been done. From the 200.000€ paid, 180.000€ was later withdrawn by Y. In doing so, the prosecutor considered, on the basis of the findings of the tax audit report, that the payment was not based on a consultancy contract but was a receipt transaction in which Y's company's assets had been transferred to Y's own use. For this reason, the prosecutor demanded punishment for both persons. There were other charges related to the case, but these did not concern defendant X.

The consultancy contract in question was justified by the defendants in such a way as to increase the sales and turnover of Y's company. The consulting contract included coaching for company management who would take the information forward to the real estate agents. The payment of 200.000€ was based on a table found in the contract, in which the fee to be paid was tied to the increase in the company's turnover. It was not disputed that the amount of the payment was in accordance with the table set out in the contract.

In his report, the tax inspector had stated that the increase in Y's turnover would not have been due to 'coaching' under the consultancy contract but to the general overall growth in the housing business in that year. To support his claim, the tax inspector presented a newspaper article writing

[131] Helsingin käräjäoikeus 18.11.2019, tuomio 19/150548

about the growth of the housing trade in October 2009.[132] The article compared the sales of October 2008 to the sales of October 2009. This article was also relied upon by the prosecutor in his statement.

Defendant Y provided evidence of sales figures comparison for the whole franchising chain for 2009, which showed that Y's company had clearly increased its own turnover more than other companies. This was believed by Y to be due to sales coaching under the consulting contract. As to why 180.000€ of the 200.000€ had been withdrawn by Y immediately after the payment, the defendants stated that Y had not withdrawn the money, but it was done by X. X withdrew the money because he had receivables from the company. This money was later loaned from X to Y, of which they had a loan agreement.

In its judgment, the District Court referred to the newspaper article in the tax audit report and found that the company's turnover was due to the general growth in the industry. In addition to this, the District Court did not consider the contract to be authentic, as immediately after the payment, a large part of the money had been withdrawn by Y. The District Court believed that this was an attempt to transfer the company's assets to Y, as described in the indictment. The District Court convicted Y of aggravated debtor dishonesty and aggravated accounting offense. X, in turn, was convicted of aiding and abetting both crimes.

The reason why this case is relevant is that the District Court based its judgment in respect of X on the findings of the tax audit report. On the other hand, the District Court did not refer in its judgment to the sales comparison submitted by the defendants covering the entire franchising activity. The tax inspector assumed that if the turnover of another company increased in that year, the increase in the turnover of the defendant Y's company, however large, could not have been due to the consultancy contract entered into. This was justified by a newspaper article, and no other evidence or argument was offered.

In order to exceed the evidentiary threshold, both the evidence in support of the defendant and the evidence against them should be taken into account. In this case, at least in the light of the grounds

[132] Rakennuslehti. (2009). *Huoneistokeskuksen asuntokauppojen määrä kasvoi 06 prosenttia lokakuussa 2009.* Retrieved from https://www.rakennuslehti.fi/2009/11/huoneistokeskuksen-asuntokauppojen-maara-kasvoi-60-prosenttia-lokakuussa-2009/, 29 April 2020.

of the judgment, that did not happen. The Court held that a newspaper article that presented the development of sales on the housing sector has been sufficient to prove the allegation. However, the defendants referred to an objective comparison of the sales figure made by the franchising chain, which showed that the results of the company in question had improved three times more than that of the other companies in the chain on average. According to the principle in dubio pro reo, a Court cannot pass a judgment if reasonable doubt of the defendant's guilt remains. Shouldn't the sales figure comparison disclosed in this case have been stronger evidence than a news article?

The conclusion that there is no reasonable doubt as to the guilt of the defendant contains elements which, taken as a whole, may be described as a hypothetical method.[133] In the hypothetical method, the Court seeks to rule out all alternative hypotheses and thus determine whether the prosecutor's issue being proved constitutes the only reasonable explanation based on the evidence. The issue being proved can be considered proven if other alternative explanations can be ruled out.[134]

A hypothesis refers to an assertion that has not yet been substantiated.[135] In criminal cases, it is possible to form opposite hypotheses about the course of events.[136] In the hypothetical method, the Court must be able to consider, on its own initiative, alternative courses of events and rule out hypotheses contrary to the prosecutor's issue being proved in order for the charge to be admissible.[137]

As mentioned earlier, the prosecutor must provide evidence to prove their issue being proved. It is for the Court to decide whether the evidence produced by the prosecutor is sufficiently comprehensive to allow a thorough evaluation of the evidence and the exclusion of alternative hypotheses.

By analyzing the hypotheses, the weaknesses and shortcomings of the prosecutor's evidence can be identified.[138] It is good to note that alternative hypotheses may not always be found. If

[133] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22,* 592.
[134] Diesen, C. (1994). *Bevisprövning i brottmål*. (1. uppl.) Stockholm: Norstedts Juridik AB, 148.
[135] *Ibid*., 130.
[136] Könönen, P. (2006), *supra nota 5*, 97.
[137] Virolainen, J., Pölönen, P. (2003), *supra nota 43,* 430–431.; Diesen, C. (1997). Grunder för bevisvärderingen. Björkman, J., Diesen, C., Forssman, F., Johnsson, P. (red.), (13-81). *Värdering av erkännande, utpekanden, DNA och andra enstaka bevis*. Stockholm: Norstedts Juridik AB, 60.
[138] Lappalainen, J., Frände, D., Havansi, E., Koulu, E., Niemi-Kiesiläinen, J., Nylund, A., Rautio, J., Sihto, J., Virolainen, J. (2007), *supra nota 22*, 594.

reasonable hypotheses cannot be formed, the charge must be upheld because the burden of proof of the prosecutor has been met.[139] If reasonable and plausible hypotheses cannot be ruled out, the charge must be dismissed because there is a reasonable doubt as to the guilt of the defendant.[140] The Court must examine all the alternative hypotheses that come up based on the evidence. In disputed cases, it is necessary to evaluate the alternative explanations put forward by the defense against the charge. For an acquittal, it is sufficient that the evidence provides some concrete and reasonable support for the alternative hypothesis. However, the hypothesis does not have to be shown or even more probable than the course of events presented by the prosecutor.[141]

If this method is applied to the above-mentioned case, the prosecutor's issue being proved was that the consultation contract was not true, and no 'coaching' had happened. The alternate course of events would have been that the consultation contract was true, and the consultation happened according to the contract. So, the Court had to consider can this alternate hypothesis be ruled out. In the case, there was no evidence that the consultation contract was not true. There was a belief of this, which was based on the news article about market growth of one month, and the withdrawal of the money. Supporting the alternate hypothesis was the actual signed consultancy contract, payment based on the contract, the loan agreement, and the sales figure comparison showing the turnover growth of the company when compared to other real estate agencies in the franchise. According to the hypothetical method, if the reasonable and plausible hypothesis cannot be ruled out, the charge must be dismissed. In this case, it was not. So, the Court did not consider this alternate hypothesis plausible nor reliable and ruled it out because the prosecutor's issue being proved was held as the only reasonable course of events.

This goes to show just how great the evidentiary value of tax audit reports is. It supersedes all the methods and accepted practices of evaluation of evidence. The statements of tax inspectors are taken as facts without evaluating the sources of their statements.

This case is a good illustration of the problem that arises when a tax audit report without any source criticism is used as evidence in criminal proceedings. In this case, the tax inspector's word about the growth of the industry was taken as a fact without even evaluating the evidence presented by

[139] Diesen, C. (1994), *supra nota 134*, 150.
[140] *Ibid*.
[141] Virolainen, J., Martikainen, P. (2010), *supra nota 8*, 300–301.

the defendants. When the opinion of the tax inspector is given such weight, the defendant has virtually no opportunity to defend himself against the allegations.

The discussed cases present a significant problem in the Finnish legal system. In these cases, when the tax audit reports, as such, are used as evidence in criminal proceedings, it endangers if not violates the presumption of innocence and arguably shoves the burden of proof to the defendant. The assumption that the taxpayer has the burden of proof only works in taxation where the only way to avoid penal taxes is to present proof that all the taxpayer's tax obligations have been fulfilled.[142] A situation where the defendant has to prove their innocence beyond reasonable doubt should not occur in criminal proceedings. This contradicts all the rights protected by the Constitution and international human rights agreements, showing that the problem we have is not minuscule.

### 2.1.2. Effect of the high evidentiary value

The high evidentiary value makes tax audit reports the key evidence in the fight against financial crimes. This can be seen from the cases discussed earlier. As tax inspector's view of the issue being proved holds high evidentiary value, there is a chance that even if the tax inspector has made an error while conducting the audit, the Court will give a guilty verdict.

One of the biggest reasons for the complaints against tax inspectors is that people are not satisfied with the tax assessments made based on the tax audit reports, and the tax inspectors are even accused of purposefully falsifying these reports and without reasoning disregarding information provided as clarification.[143] Even though some of these complaints have ended up in Administrative Courts, no tax official has been found guilty of misconduct while performing their tasks.[144] If the official accountability does not, in fact, apply to tax officials, it cannot be justified why the Courts trust the reports drafted under this assumed liability.

Sometimes the language used in the report is vague, and the report might be hard for the taxpayer to understand.[145] In some cases, the entire tax assessment might be based on one assumption done

[142] Puronen, P. (2010). Oikeusturva, verotus ja viranomaiskäytänteet. (1. painos) Helsinki: WSOYPro, 153-155.
[143] Uudenmaan verovirasto. (1999), *supra nota 115*, 239.
[144] *Ibid.*
[145] Mariapori, L. (2016), *supra nota 130*, 291.

during the auditing process.[146] In these cases, the tax assessment is not made based on facts but purely on the assumptions of the tax inspector, and this is not a good practice for the taxpayer nor for the Tax Administration. This can be seen from the tax audit report analyzed in chapter 2.2.

The following case shows what can happen when erroneous tax audit reports and the high evidentiary value of these reports are combined.

In this case,[147] the prosecutor demanded a conviction of the defendant for aggravated tax fraud because according to the prosecution, the company where the defendant was the person in charge had avoided income tax, VAT, and prepayment tax totaling 203.542€. Evidence provided by the second plaintiff and other interested parties, as well as a tax audit report prepared by the Tax Administration, were used as evidence by the prosecutor. In addition, the prosecutor demanded a conviction for an aggravated accounting offense and aggravated attempted fraud.

The defendant had built a detached house for himself in 2004-2005. At the same address, during the years 2004-2006, he had built residential houses for two other families with the company he represented. In addition, the company had built two other sites during 2006 and carried out various other renovations for private individuals. Disagreements arose between the parties over the construction work carried out by the company, and the defendant's actions were reported to the tax authorities. As a result of these whistleblowers, the Tax Administration carried out a tax audit on the company and the defendant in 2007. The audit report stated that the tax years 2004-2006 had been audited.

The prosecutor alleged in the case that the defendant had failed to invoice the labor costs for the construction of, inter alia, his own and other houses in 2004-2006 and that, as a result, the uninvoiced sales had not been reported to the tax authorities. The prosecutor substantiated his allegation with the conclusions set out in the tax audit report. In the tax audit report, the tax inspector’s calculations of the tax evaded had been based on a chart found on the defendant's computer showing the hours worked by the employees. According to the tax inspector and the prosecutor, the defendant had failed to report an uninvoiced sale of approximately 150.000€. In addition, the prosecutor considered that the defendant had received cash payments for 3.728€, which the defendant had not entered in the accounts of the company. Accordingly, the prosecutor

[146] *Ibid*.
[147] Varsinais-Suomen käräjäoikeus 03.07.2015, tuomio15/129031

considered that the avoided income tax was approximately 95.000€. In addition, referring to the tax audit, the prosecutor considered that the defendant had failed to declare approximately 77.000€ in sales VAT in 2004-2006. By using undeclared labor, the prosecutor considered that the defendant had avoided taxes on labor in the amount of approximately 30.000€. By acting in the above-mentioned manner, the defendant, according to the prosecutor, had also committed an aggravated accounting offense.

In the District Court, the defendant held that he had not committed any of the offenses mentioned by the prosecutor and held that the charges should be dismissed. The defendant based his argument on the fact that both the prosecutor and the tax inspector had relied on their statements on an incorrectly prepared tax audit report and a table that was not accurate. The defendant said that the table was an exercise chart that was not based on actual performance on construction sites. With regard to undeclared labor, the defendant stated that the company had no employees and that all the workers on the construction sites were labor acquired through an Estonian company, whose wages were borne by the Estonian company and not by the Finnish company managed by the defendant.

In its judgment, the District Court referred mainly to the table found on the defendant's computer. Although the Court found that the table alone cannot be given significant evidentiary value, the information obtained from it, together with other findings made by the tax authorities and the police, provides a plausible overall picture of what happened. The Court found that, in the manner set out in the tax audit report, the defendant had sought to obtain a substantial tax benefit. As the case regarding the companies taxation had already been decided by the Administrative Court, the District Court found that the amount of tax evaded, estimated by the prosecutor was too high, and that the prosecution could not be fully substantiated. The Court found the defendant guilty of aggravated tax fraud and aggravated accounting offense and ordered him to pay the Tax Administration 125.635€ in compensation for the damage caused by his crime.

Based on the tax audit, the Tax Administration had already made a tax decision concerning the company in 2008 before the District Court's decision, in which it ordered the company to pay reassessment and penal taxes of approximately one million euros.[148] Since the tax decision concerned a company and not an individual, the case could be prosecuted without fear of double

[148] Asianajotoimisto Tapio Kinnanen. Kinnanen, T. (2017, Feb 13). *Turkan tapaus*. [Blog post]. Retrieved from https://www.tapiokinanen.com/turkan-tapaus/, 21 March 2020.

jeopardy, since, according to settled case-law, the Ne bis in idem principle precludes only a double penalty in the same case.[149] In this case, the tax decision concerned the company, and the criminal proceedings concerned the conduct of the person in charge of the company, so the Ne bis in idem principle cannot be applied in the case. As a result of the tax decision, the entire property of the company and of the defendant had to be sold in foreclosure. The defendant lost his home and property and could no longer practice his profession due to a tax debt.[150]

After the District Court's decision, the defendant began to investigate why the Court had believed the testimonies of the tax authorities and the police so absolutely.[151] The defendant went through the tax audit report and found errors that had not been taken into account in the actual tax audit.[152] It turned out that the tax inspector had carried out the audit largely on the basis of the letters of the whistleblowers and had gathered evidence and prepared the tax audit report on the basis of them.[153] The police had acted in the same way as the tax authorities.[154] According to the whistleblowers letters, the defendant would have used undeclared labor and built his own house with his company.[155] Both the tax authorities and the police had erred in considering the copies of the invoices submitted by the whistleblowers as the whole bookkeeping of the company represented by the defendant and, as a result, the entirety of the bookkeeping of the company had not been audited during the actual tax audit.[156] In addition, the tax audit was limited to the accounts of the Finnish company, and the accounts of the Estonian company responsible for the employees' salaries had not been taken into account.[157]

The defendant appealed the District Court's decision to the Court of Appeal. In his complaint, the defendant alleged that the tax audit had been carried out with incomplete information and that the Estonian company's bookkeeping, which showed that all employees and their fees had been duly paid, was not taken into account.[158] In addition, the complaint sought to show that the defendant

[149] KKO 2014:93 Point 56
[150] Rautajuuri, T., Kinnanen, T, lawyer, Vuorenpää, M, Professor University of Lapland. *Mies, joka selätti verottajan: käsikirjoitus*. Sakola, H. Transcript. 11 February 2019. Retreived from https://yle.fi/aihe/artikkeli/2019/02/11/mies-joka-selatti-verottajan-kasikirjoitus, 21 March 2020.
[151] *Ibid*.
[152] *Ibid*.
[153] *Ibid*.
[154] *Ibid*.
[155] *Ibid*.
[156] *Ibid*.
[157] *Ibid.*
[158] *Ibid.*

had himself financed the construction of his house and had also participated in the construction himself.[159]

The defendant was acquitted of all charges and damages by the judgment of the Turku Court of Appeal in 2016.[160] Both the prosecutor and the Tax Administration accepted the defendant's complaint as such, and the Court of Appeal issued a unilateral judgment in the matter. The tax audit, and with it the criminal investigation and prosecution, were based on incomplete and erroneous material and unilateral whistleblower material.[161] Following the judgment of the Court of Appeal, the prosecutor found that the additional explanations brought to the Court of Appeal testified that the defendant had not been guilty of what the District Court had convicted him of.[162] As a problem, the prosecutor stated that the Estonian company's bookkeeping had remained uninvestigated by the Tax Administration and the police.[163]

At present, the liability for compensation from the Tax Administration is being tried in the Administrative Court. According to the defendant, his personal and company expenses already total about 5.7 million euros.[164] According to the Tax Administration, a judgment of the Court of Appeal has no legal effect on a tax dispute before the Administrative Court.[165] In practice, this means that the Administrative Court may reach a different result in its judgment than the Court of Appeal dealing with the criminal case. However, in order for that to happen, the Administrative Court should, unlike the Court of Appeal, interpret the matter as meaning that the tax audit had been carried out correctly.

This case shows how tax audit reports can, as evidence, have an effect on the judgment and potentially on the legal protection of the defendant. If the findings of the tax audit report are taken into account as facts in criminal proceedings, it is challenging for the defendant to repeal these allegations by presenting their own evidence, as the defendant's testimony is not considered as credible because they do not have to remain truthful. Thus, an official's report made in the course of their duties gets a much stronger evidentiary value. In the case, the Court found the findings of the tax audit to be more credible than the defendant's view on the matter. The District Court did

[159] Turun hovioikeus 17.11.2016, tuomio 16/148074
[160] Turun hovioikeus 17.11.2016, tuomio 16/148074
[161] Kinnanen, T. (2017), *supra nota 148*.
[162] Sakola, H. (2019), *supra nota 150*.
[163] *Ibid*.
[164] Kinnanen, T. (2017), *supra nota 148*.
[165] Sakola, H. (2019), *supra nota 150*.

not present any criticism on the due diligence of the tax audit, although the defendant pointed this out in his reply. The Courts should, therefore, evaluate the evidentiary value of the tax audit report more critically, and question, whether the conclusions set out in it, have been sufficiently substantiated. Although, this should already happen during the criminal investigation conducted by the police, in which case it would be up to the police to make the same assessment. The fact that tax audit reports are given evidentiary value as evidence in criminal proceedings is not justified if the tax inspector's official accountability does not actualize if the audit report is found to be erroneous. In this case, the defendant suffered significant financial losses as a result of an erroneous tax audit, which was later used as evidence in a criminal case. Without the defendant's own efforts to prove the allegations made in the tax audit report as erroneous, the District Court's verdict would have remained in force, and an innocent person would have fallen victim to the erroneous actions of the tax authorities.

This could have been avoided if the police would have 'opened up' the tax audit report and conducted their own investigation in a way that it is examined if the findings presented by the tax inspector can be proven. For example, if the tax audit report states, that the taxpayer has been found to be disguising the sales, the police should look at whether this claim is truthful or not. The mere findings of the tax inspector should not serve as evidence without concrete proof gathered by the police. At present, however, tax audit reports are included as such in the criminal investigation report, and the tax inspectors' views are taken into account as facts without going through it in more detail. When this report is submitted to the Court in the final stage as evidence, it is difficult to separate the conclusions from the facts from the already written 'story'.

The two processes are regulated differently, and the rights of the defendant and the obligations of the taxpayer could not be further from each other. According to the Act on Assessment Procedure Chapter 4 Section 27.2, assessment on the estimated income can be made if there is 'reason to believe' that the taxpayer is hiding their income. The tax inspector can make this assessment and they do not have to provide any proof that the taxpayer actually is hiding their income.[166] Courts cannot make their judgement based on estimations. If these fraudulent tax audit reports are used as evidence in the criminal proceeding, and the tax inspector is heard as a witness, the legal protection of the taxpayers can be considered as nonexistent, as the tax inspectors can with the witness affirmation swear that these tax audit reports are correct.[167] This means that the tax audit

[166] Mariapori, L. (2016), *supra nota 130*, 307.
[167] *Ibid.,* 308.

report drafted under official accountability supersedes the right to a fair trial that the taxpayer/defendant has.[168]

## 2.2. Witness statements

The key principles in legal proceedings are its adversarial nature and the de facto equality of the parties.[169] One of the most important matters in the fair trial is the discussion between the Court and the parties about the subject matter of the case and the evidence used in the Court.[170] In order for the conditions for a fair trial to be met, all parties must have the right to access the case materials and to produce it themselves, and each party must be given the opportunity to present their case.[171] In some cases, however, the Court has the power to restrict these rights of the parties.[172]

The right to examine the witness is most effectively exercised in oral and direct production of evidence, where the reliability of the witness and the statement presented by them can be evaluated.[173] However, this is not possible in all situations, and equal treatment of the defendant may suffer in situations where the defendant's right to examine is restricted, and the use of a written witness statement is allowed.[174]

The oral and direct nature of the production of evidence will ensure the requirements of a fair trial.[175] The oral nature of the production of evidence can also be found in Article 6 (3d) of ECHR. In Finland, in principle, written witness statements have been placed under a prohibition of use.[176] Direct production of evidence, where a party has the opportunity to question the witness, is intended to promote the reliability and substantive truth of the evidence.[177] For this reason, the use

[168] *Ibid.*
[169] Gardemeister, K. (2012), *supra nota 17,* 77.
[170] Jokela, A. (2005). *Oikeudenkäynnin perusteet: Oikeudenkäynti 1*. (2. painos) Helsinki: Talentum Oyj, 78
[171] Ervo, L. (2005). Oikeudenmukainen oikeudenkäynti keskusteluna. *Lakimies* (3/2005) 452-455, 454; Tirkkonen, T. (1969). *Suomen rikosprosessioikeus 1.* (2. painos) Porvoo: WSOY, 81.
[172] Gardemeister, K. (2012), *supra nota 17*, 77.
[173] Hormia, L. (1978). *Todistamiskiellosta rikosprosessissa 1*. Vammala: Suomalainen Lakimiesyhdistys, 116, 119; Tapanila, A. (2004), *supra nota 16,* 57.
[174] Gardemeister, K. (2012), *supra nota 17*, 84.
[175] Ervo, L. (2005). *Oikeudenmukainen oikeudenkäynti*. Helsinki:WSOY, 167.
[176] Oikeudenkäymiskaari 1.1.1734/4, 17 Luku 47.1 §
[177] Jokela, A. (2005), *supra nota 170*, 159.

of written witness statements is restricted if the witness cannot be personally heard in the Court proceedings.[178]

The European Court of Human Rights (ECtHR) has ruled that the more substantial the evidence is, the more important the right of the defendant to examine the witness is.[179] If the evidence in question is not too substantial, the defendant's right may be waived if, for example, they had an opportunity to examine the witness during the criminal investigation.[180] This practice allows the use of the criminal investigation report in Court proceedings, in situations where a witness cannot be examined, if the witness does not wish to state anything in the case or has changed their statement about what they have said before.[181] ECtHR has also ruled that criminal investigation reports may be referred to if the defendant has had appropriate and sufficient time to challenge the statement presented in it.[182] However, if the judgment of the case was based solely or decisively on the statement, it violates Article 6 of ECHR, if the defendant could not examine the person who gave the statement.[183]

However, the right of the defendant to examine a witness cannot be considered as an absolute right.[184] A guilty verdict should not be based solely or decisively on a witness statement, which the defendant has not had the opportunity to examine.[185] On the other hand, if the statement is not of high evidentiary value and is not decisive, the absence of the defendant's right to examine the witness can be more easily accepted.[186] In other words, the defendant's right to examine the witness correlates the importance of the witness statement.[187]

When the abovementioned is applied to tax audit reports, it can be seen that this becomes problematic. A tax audit report is a document drafted by the tax inspector containing the inspector's comments on the audit. Tax audit reports record the inspector's comments on the audit events, the findings, and assumptions done by the inspector that might be instrumental when doing the tax assessment, and proposals of the inspector on how the matter should proceed.[188] When the tax

[178] *Ibid*.
[179] Unterpertinger v. Austria, no. 9120/80, ECtHR 24.11.1986; Asch v. Austria, no. 12398/86, ECtHR 26.4.1991.
[180] Tapanila, A. (2004), *supra nota 16*, 85.
[181] Gardemeister, K. (2012), *supra nota 17*, 85.
[182] MarianaMarinescu v. Romania, no. 36110/03, ECtHR 2.2.2010
[183] *Ibid*.
[184] Tapanila, A. (2004), *supra nota 16*, 51.
[185] *Ibid*.
[186] Gardemeister, K. (2012), *supra nota 17,* 88.
[187] *Ibid*.
[188] Myrsky, M, Linnakangas, E. (2007), *supra nota 116*, 144.

inspector is heard as a witness, the inspector shall testify to the findings they made during the audit. It is problematic that the findings made by the tax inspector may include information obtained from third parties on the basis of which the inspector has arrived at his conclusions.[189] According to the above-mentioned current legislation, the defendant should be given the opportunity to hear and question the witness whose report is used as evidence against the defendant in Court. When the tax inspector is heard, the defendant does not, of course, have the opportunity to question third parties who have influenced the inspector's findings, only the tax inspector alone testifies to these statements made by others. In practice, the audit report made by the tax inspector is based on his findings in the same way as a medical opinion is based on the findings made by a doctor. As a result, it is the tax inspector who is heard in Court as a witness. However, it does not remove the fact that the tax inspector's findings may be based entirely on information obtained from third parties.

In the following tax audit situation, the entire audit originated from a person who was not the subject of the audit. In addition, the findings made by the inspector were almost all based on the information provided by that person.

A tax audit was carried out by the tax authorities in 2016 on the bookkeeping materials of 2014-2015 of a jewelry store operating in Finland.[190] The tax audit was carried out because an old employee of the company had reported the actions of his old employer to the tax authorities.[191] The old employee based his report on the cash receipts and on the July 2014 bookkeeping materials stolen from his employer.[192] At the same time, it turned out that the same employee had embezzled cash from the store on his date of departure.[193] In connection with the tax audit, it became clear that the employee who made the report had made cash sales past the cash register using a 'training mode' in the cash register system.[194] In training mode, transactions made to the cash register are not registered in the cash register system and therefore are not included in the company's bookkeeping unless they are recorded there separately.[195] Subsequently, the old employee

[189] Mariapori, L. (2016), *supra nota 130*, 305.
[190] Verotarkastuskertomus VETAUVT2015T1081
[191] Vastaus verottajan selvityspyyntöön asiassa VETAUVT2015T1081/ VETAUVT2015T1181. 30.05.2016
[192] *Ibid*.
[193] *Ibid*.
[194] *Ibid*.
[195] *Ibid*.

provided these receipts from his own sales to the tax authorities and presented them as undeclared sales of the company.[196]

The company in question sold jewelry to Chinese tourists. This was based on an agreement between the jewelry company and a Chinese travel company, in which the jewelry store pays the travel company annual commission and marketing fees in exchange for the travel company bringing Chinese tourists to do business with the jewelry store.[197] When tourists arrived at the store, the business used a commonly known way to get customers to buy their jewelry.[198] This happened in a way that the tourist group's guide made a fake purchase in the store, so the tourists also dared to shop themselves after noticing that the guide trusted the price and quality of the store.[199] When the guide actually made the purchase, the cash register was turned into training mode, in which case the purchase transaction is not registered in the cash register system, and the purchase price was set at 0.01 euros.[200] This receipt was marked separately with a pen and entered in the bookkeeping because otherwise the transaction would not have been recorded.[201] Finally, the group leader was given only an empty plastic bag.[202]

In addition to this, according to an agreement between the jewelry store and the travel company, the Chinese tourists had the opportunity to purchase additional services for their trip from a jewelry store that they had not ordered before leaving for their trip.[203] Such additional service included a variety of services such as travel, accommodation, museum visits, and lunches.[204] In Finland, sales of travel agency services are subject to a special VAT system. When a tour operator sells in its own name services and goods purchased from other traders directly for the benefit of the traveler, it is a sale of a travel agency service.[205] Sales of travel agency services are subject to the marginal taxation procedure for travel agency services, which is provided for in Section 80 of the Value Added Tax Act (Arvonlisäverolaki 30.12.1993/1501).[206] This means that the tour operator pays VAT on the profit margin, i.e. the difference between the price of the travel agency service it sells

[196] *Ibid*.
[197] *Ibid*.
[198] *Ibid*.
[199] *Ibid*.
[200] *Ibid*.
[201] *Ibid*.
[202] *Ibid*.
[203] *Ibid*.
[204] *Ibid*.
[205] Matkatoimistopalvelujen marginaaliverotusmenettely, antopäivä 02.05.2013. Retrieved from https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/48715/matkatoimistopalvelujen_marginaaliverot/
[206] *Ibid*.

and the prices of the services and goods it buys.[207] As the sale of these services was not the main task of the jewelry shop, there was no separate product ID for these services in the cash register system.[208] This problem was eliminated by the fact that all travel services had to be paid for with a card, and whenever a card payment without a product ID appeared in the accounts, it was recorded as a VAT-free sales of travel services.[209]

In the tax audit, the inspector paid attention to the above-mentioned sales of travel services. In the tax audit report, the inspector states that " In the course of the audit, it has become apparent that the sales made in the store which are recorded as travel service sales are in fact sales subject to the store's standard VAT rate. "[210] So, the tax authorities stated that sales of travel services were, in fact, sales of products subject to VAT (sales of jewelry) disguised as sales of travel services. The tax authorities did not justify this finding in any other way than by stating that it has been found to be so. In addition, the tax inspector stated that "the subcontracting costs related to the sale of travel services have been recorded in the company's accounts. Thus, the company must have had revenue from the sales of travel services, which have not been credited to the bank accounts known to the company and have not been entered into the bookkeeping as sales revenue. "[211] The tax inspector's view was, therefore, that the sales of travel services recorded by the company were not sales of travel services but sales of products subject to VAT. However, because the company has expenses from the sales of travel services, the company must have also had sales of travel services from which it has received revenue. On the basis of these subcontracting costs, the tax authorities estimated the amount of the company's travel service sales. In their reply, the company stated that if the imposed tax payments were approved on the basis of the criteria presented by the inspector, an additional tax could be imposed on each Finnish company.[212] The tax authorities should only state that the sales revenue recorded in the bookkeeping of the companies is not the actual sales revenue from their business, but since they have expenses from their business, the companies must also have undeclared sales revenue.[213]

In addition to travel service sales, the tax inspector took into account in his audit report the training mode receipts sent by the former employee. The inspector considered that if the company had

[207] *Ibid*.
[208] Vastaus verottajan selvityspyyntöön (2016), *supra nota 191*.
[209] *Ibid*.
[210] Verotarkastuskertomus, *supra nota 190.*
[211] *Ibid*.
[212] Vastaus verottajan selvityspyyntöön (2016), *supra nota 191*.
[213] *Ibid*.

these unrecorded training mode receipts from cash sales in July 2014, the company must have had these unrecorded cash sales in other months throughout the auditing period.[214] This deduction led to the conclusion that the company had been engaged in undeclared cash sales throughout the two-year auditing period.[215] This conclusion was made by the tax inspector only on the basis of the former employee's statement, and they did not interview other employees or suppliers of the company who could have given accurate information on the number of goods moving within the company.[216]

In the case, the company was imposed with penal taxes, and the business owner is suspected of an aggravated tax offense. The matter is currently being dealt by the Administrative Court, and the tax authorities have made a request for an investigation to the police.

As can be noticed, in the case, the documents and statements received from the former employee served as the basis for the findings made by the tax inspector. The findings of the inspector were based on this information, and when the inspector may be heard in Court as a witness, the defendant will not have the opportunity to question anyone other than the tax inspector who compiled the audit report.

When a tax audit report is used as evidence in a criminal case, it usually plays a key role as evidence, because, as mentioned earlier, most tax offenses are found out based on tax audits. For this reason, when using a tax audit report as evidence, the defendant should be given the opportunity to question all those persons who may have been considered to have influenced the findings and conclusions of the tax auditor.

In taxation, in addition to the subject of the tax audit, also third parties have the same obligation to disclose information for the tax authorities regarding the tax subject's financial situation, even if this information would be protected by the Code of Judicial Procedures Chapter 17 Sections 10-23 right to refuse to testify.[217] When the tax inspector who has conducted the audit presents their testimony during the Court proceedings, he will testify based on the audit findings, regardless

[214] Verotarkastuskertomus, *supra nota 190.*
[215] *Ibid*.
[216] Vastaus verottajan selvityspyyntöön asiassa VETAUVT2015T1081/ VETAUVT2015T1181/ VETAUVT2016L240. 15.08.2016
[217] Laki verotusmenettelystä 18.12.1995/1558, 19 §

where this information came from.[218] This creates a problem as some of the information might have come from sources that have the right not to testify based on the above mentioned Code of Judicial Procedure Chapters. The right not to testify might not be protected in these situations. Chapter 17 Section 17 of the Act gives the relatives of the suspected person the right not to testify against them in the criminal proceedings. As mentioned earlier, this also applies in situations where the close relative of the suspect has given their testimony during the criminal investigation, but later during the proceedings invokes their right not to testify, their prior testimony cannot be used in the Court. This includes situations where the person who has conducted the criminal investigation is heard as a witness regarding the testimony of the relative.

This predicament was discussed in a Finnish Supreme Court's ruling KKO 1995:66. In the case, a close relative of the suspect mentioned in the Code of Judicial Procedure Chapter 17 Section 20 (present Section 17), had invoked their right not to testify during the Court proceedings. During the Court proceedings, one of the witnesses was the police officer who had conducted the questioning of this relative during the criminal investigation. In their testimony, the police officer told the Court everything the relative had told them during the criminal investigation. In the Court's ruling, it was made clear that the testimony of the police officer could not be relied upon and used as evidence, as the testimony of the relative was protected by Chapter 17 Section 20(17) of the Code of Judicial Procedure when the relative had invoked their right not to testify.

The judgement of the Court makes it clear that in a situation where the information has been disclosed by third parties, this information cannot be automatically used. The requirement is that this information was disclosed by a person mentioned in the Code of Judicial Procedure Chapter 17 Section 17 and that they have invoked their right not to testify. It should be clear that if a person has disclosed information during a tax audit according to their obligation to do so, and during criminal proceedings, they have the right not to testify, and they use this right, then the tax inspectors testimony for this part should not hold even the evidentiary value of hearsay during the Court proceedings.[219]

Due to the above reasons, the current law on written witness statements should be more strictly followed in case law. When a tax audit report is used as evidence in a criminal case, the tax inspector should only be able to testify on matters not based on information obtained from others,

[218] Passila, K. (2011), *supra nota 118*, 185-186.
[219] Jokela, A. (2008), *supra nota 73*, 491.

if such a person cannot be heard in Court as a witness or refuses to testify on the basis of his or her rights.

What makes this problematic is that the tax inspectors can continue to present their audit findings in Court but leave out the explanation on what information their findings are based. This is entirely possible, as taxation can be provided by assessment if reliable information is not available from the taxpayer or the information provided by them is not considered credible. [220] In such situations, for the purposes of imposing taxes, it is sufficient, for example, for the tax inspector to suspect, on the basis of the audit findings, that the taxpayer is concealing their income, and there is no need to justify this view in any other way. [221] In practice, it is therefore difficult to verify to what extent the tax inspectors' findings are based on information obtained from others and to what extent the inspectors own conclusions. As a result, the stricter line of current legislation proposed above is virtually impossible to implement. The solution should, therefore, be something that safeguards both the legal security of the defendant and the financial interests of the Government.

[220] Laki verotusmenettelystä 18.12.1995/1558, 4 Luku 27.2 §
[221] Mariapori, L. (2016), *supra nota 130*, 298

# 3. PLACEMENT OF THE TAX AUDIT REPORTS INTO THE EXISTING EVIDENCE VALUE MODEL IN CRIMINAL PROCEEDINGS

## 3.1. Possible solution through the right against self-incrimination

The high evidential value of tax audit reports, their inconsistences in quality and the differences with criminal law principles, pose many problems for both entrepreneurs and for individual taxpayers that should be addressed. The connections between tax and criminal processes has already been discussed in the Finnish Parliament before, when it considered the Government's proposal[222] to change the Code of Judicial Procedure with regard to its Articles on right against self-incrimination and the prohibition of use of written statements. The main reason for the this was the changed case law of the ECtHR according to which, penal taxes would be equated with criminal sanctions.[223]

Both the Parliamentary Judiciary Committee and the Constitutional Law Committee concluded in their reports that the protection against self-discrimination would extend to tax proceedings only to the extent that criminal proceedings were pending on the same matter.[224] However, this solution

[222] Hallituksen esitys eduskunnalle oikeudenkäymiskaaren 17 luvun ja siihen liittyvän todistelua yleisissä tuomioistuimissa koskevan lainsäädännön uudistamiseksi (HE 46/2014)

[223] European Court of Human Rights judgement, 23.11.2006, case of Jussila v. Finland, no. 73053/01. Retrieved from http://hudoc.echr.coe.int/eng?i=001-78135; European Court of Human Rights judgement, 16.09.2009, case of Ruotsalainen v. Finland, no. 13079/03. Retrieved from http://hudoc.echr.coe.int/eng?i=001-92961

[224] Eduskunnan lakivaliokunnan mietintö 19/2014 vp, hallituksen esitys eduskunnalle oikeudenkäymiskaaren 17 luvun ja siihen liittyvän todistelua yleisissä tuomioistuimissa koskevan lainsäädännön uudistamiseksi (LaVM 19/2014); Perustuslakivaliokunnan lausunto 39/2014 vp Lakivaliokunnalle, hallituksen esitys eduskunnalle oikeudenkäymiskaaren 17 luvun ja siihen liittyvän todistelua yleisissä tuomioistuimissa koskevan lainsäädännön uudistamiseksi (PeVL 39/2014)

did not eliminate the problem that tax audit reports could still be used as evidence in criminal proceedings, albeit only to the extent that the proceedings have not been simultaneous.[225] In practice, parallelism never happens because, as noted earlier, many financial crimes only come to light during or after a tax audit.[226] Tax authorities can also defer the possible penal tax and wait if the prosecutor decides to prosecute the taxpayer based on the police criminal investigation.[227]

The reason why the right against self-incrimination is not applicable in purely taxational proceedings is apparent as taxpayers are in a better position to provide information regarding their financial situation than the tax authorities and because of their obligation to disclose information.[228] However, the situation changes when this information is used against the taxpayer during a possible criminal case. One solution that has been offered would be to extend the right against self-incrimination to cover all the information gathered during tax audits. This was presented by the Parliaments Judiciary Committee member Tuula Linna, in her statement regarding the before mentioned Governments proposal, ''The Article binds the use of the prohibition of use solely to situations where a criminal investigation or criminal proceedings were already pending when the information was provided in another proceeding. However, self-incrimination protection is not limited to such situations. The conclusion that, in one way or another, a person is being prosecuted on the basis of information that he has been forced to provide in another proceeding, is, to my understanding, a violation of the self-discrimination protection contained in Article 6 of the European Convention on Human Rights.''[229] Linna gives in her statement a broad interpretation to the right against self-incrimination. Based on the broad interpretation, it could be stated that ultimately the mere risk of prosecution is sufficient to invoke the right against self-incrimination.[230] Finland is not alone in this as also in Sweden it has already been interpreted in older legal literature that a taxpayer would have the right against self-

[225] Vuorenpää, M. (2011). Itsekriminointisuojan tulkinta ja sen vaikutukset todisteluun. T, Hyttinen., K, Weckström (toim), *Juhlajulkaisu Turun yliopiston oikeustieteellinen tiedekunta 50 vuotta* (585-596). Turku: Turun yliopisto, oikeustieteellinen tiedekunta, 586-587.
[226] Korvenmaa, J. (2012). Itsekriminointisuoja korkeimman oikeuden viimeaikaisessa oikeuskäytännössä - tarkastelun kohteena erityisesti ratkaisut KKO 2009:80 ja KKO 2010:41. Ervo, L., Lahti, R., Siro, J. (toim.), *Perus- ja ihmisoikeudet rikosprosessissa*, (239-264). Helsinki: Helsingin Hovioikeus.
[227] Immonen, M. (2016) Veronkorotus ja rikosvastuun toteuttaminen. Erityisesti tarkastellen kansallisen lis pendens -tulkinnan ja EIT:n vallitsevan tulkinnan välistä jännitettä ja sen vaikutuksia käytäntöön. Koponen, P., Lahti, R., Konttinen-Di Nardo, E. (toim.), *Kirjoituksia rikosprosessioikeudesta*, (57-102.). Helsinki: Helsingin Hovioikeus, 67, 81.
[228] Mariapori, L. (2016), *supra nota 130,* 291.
[229] Linna, T. (2014). Asiantuntijalausunto eduskunnan lakivaliokunnalle hallituksen esityksestä HE 46/2014, oikeudenkäymiskaaren 17 luku ym. Muistio 16.6.2014, 2.
[230] Tapanila, A. (2010). Itsekriminointisuoja tiedonanto- ja toimimisvelvollisuuden rajoitteena. *Defensor Legis* (5/2010), 568.

incrimination under Article 6 of the ECHR at the stage where the tax audit leads to a criminal investigation.[231] In such cases, simultaneous criminal investigation would not be a prerequisite. The taxpayer would therefore have the right not to submit documents and other explanations to the tax authorities in circumstances where the general conditions for the application of the right against self-incrimination are fulfilled.[232] Similarly, it has been suggested in Finnish legal literature that the right against self-incrimination should actualize at the latest when the person becomes a suspect in criminal investigation.[233]

These approaches are somewhat extreme. The ultimate goal should not be to extend the right against self-incrimination to cover all the information that can be gathered in administrative or other proceedings. In the end, this would not work as it would affect the Government's financial interests through taxation, as no one would be willing to provide information to the tax authorities if they could always invoke their right against self-incrimination; when they have the fear of being prosecuted. So, the broad understanding of the right, that Linna and the others are suggesting would not be suitable from the Tax Administrations perspective. Ultimately this approach would not fix the fact that even though taxpayers would have the right against self-incrimination, erroneous tax audit reports might still exist, and this extension of the right against self-incrimination would not remove this problem. The method to solve the problem should be something that would allow efficient tax proceedings but would not hinder the taxpayer's legal protection in criminal proceedings.

## 3.2. Bases for the solution

The Code of Judicial Procedure Chapter 17 Section 1 does not take a position on what evidence is sufficient for the judgment to be given. The sentencing threshold is therefore not explicitly stated in the law. As mentioned before, the Courts have the power to consider what is to be considered

[231] Äimä, K. (2011). Veroprosessioikeus: Ihmis- ja perusoikeuksien sekä EU-oikeuden vaikutukset verotusmenettelyyn ja muutoksenhakuun erityisesti tuloverotuksessa. WSOYPro, 182; Fast, K. (2008). Mänskliga rättigheter i EG-skatterätten. *Svensk skattetidning*, 172.
[232] Äimä, K. (2011), *supra nota 231*, 18; Brokelind, C. (2009). National Report on Taxpayer Protection in Sweden. In: Nykiel, W., Sek, M. (Eds.), *Protection of Taxpayer's Rights. European, International and Domestic Tax Law* Perspective (328-348). Warsaw: Wolters Kluwer Polska, 347.
[233] Virolainen, J., Pölönen, P. (2004). *Rikosprosessin osalliset: Rikosprosessioikeus 2.* (1. painos). Helsinki: SanomaPro, 309.

true in the case. However, there is little legislation in Finland on the evidentiary value of evidence. In criminal proceedings, one of the most important things is to find out what has happened, that is, the truth. This is, of course, hard because the event has happened in the past and it makes it more difficult to find out the truth. For this reason, it must be considered sufficient that the decision corresponds to the truth with sufficient probability.

So, the Courts can freely evaluate the presented evidence and based on that decide what holds higher value in the case. From the presented cases it is clear that the Courts favor the tax audit reports because of the tax inspector's official accountability. However, can a tax inspectors deduction based on his opinion and a news article hold more value as an evidence than a verified account statement?

Because of the current legislation in Finland, the use of tax audit reports as evidence in criminal proceedings is allowed. This is a massive problem for the legal protection of the suspected party. The current evidentiary value of tax audit reports is very high. This has been established in the research through cases which show that the Courts depend on these tax audit reports when evaluating the criminal liability of the defendant. As it has been shown, in some cases, the judgement is solely based on the conclusions of the tax inspector, which undoubtedly affects the defendants right to a fair trial.

In taxation the free consideration of evidence is used[234], and because of this, the tax assessment can be an estimation if the statement of the taxpayer cannot be considered reliable.[235] No undisputable evidence is needed, just the assumption of the tax inspector that taxpayers obligations have been neglected.[236] Additionally, if the taxpayer wants to avoid the possible tax consequences, they have to provide proof that they have acted according to their obligations. These are completely different from the burden of proof and the presumption of innocence that are enshrined in law regarding criminal proceedings. Because of the burden of proof, the prosecutor has to show that the descripted crime has been committed, and based on the presumption of innocence, the defendant is to be considered not guilty until proven otherwise. A criminal sanction cannot be based on assumptions or estimations on what has happened. So, no one can be held criminally liable just because it is assumed, they have committed a crime, that would be contrary to the

[234] Mariapori, L. (2016), *supra nota 130*, 146.
[235] *Ibid.,* 298.
[236] *Ibid.*

principle of fair trial. For example, if five drunk people are driving a car but they run off when they see the police, none of them can be sentenced with drunk driving if the police cannot show who was the person driving the car. It is not enough to say that someone drove the car.

Legislation regulating tax audits and criminal investigation is detailed and takes into account the purposes of these two processes. If the regulations regarding tax audits would be changed, this might have a negative effect on taxation. That would not be advisable, as it is one of the cornerstones of our States welfare. By amending the regulations of criminal investigation, it might have an unwanted effect on the work of the police. Implementing criminal liability is an important job, and by making it harder, it would not benefit anyone except criminals.

Lastly, the Courts right of free evaluation of evidence is an important principle of rule of law and in principle, it prevents arbitrary decisions of the Court. If the free evaluation of evidence is restricted in general because of the problems regarding tax audit reports, it would have an effect on all the other cases as well. By limiting the Courts right to evaluate evidence freely, it would lower the legal protection of individuals.

## 3.3. Solution

The idea of broad interpretation of the right against self-incrimination that Linna presented in her comment, is not too far from the possible solution. The solution offered in my bachelors' thesis was close to the broad interpretation of the right against self-incrimination. The overwhelming evidentiary value that the tax audit reports presently enjoys places the defendant in a tight spot, as they do not have the obligation to remain truthful, which hiders their chances to repeal the charges. Linna and the solution offered in my bachelors' thesis were on the right track.

What the old solution did not take into account was the individual's right to use the tax audit report in Court if needed. Additionally, the solution was to completely prohibit the use of tax audit reports in criminal proceedings. This would affect the work of the police when implementing criminal liability, as they could not use the information from tax audit reports when conducting criminal investigation.

Because of these issues in the prior solution, a new more reasoned one should be presented. In the new solution the prohibition of use should be connected to the defendants right against self-incrimination. This means that the prohibition should be applied when the defendant does not rely or give their consent to the use. This would allow the defendant to use the necessary information in the reports and the other parts would still be under the prohibition of use. This amendment would resolve the current problem and would not have an effect on taxation nor to criminal liability.

The Code of Judicial Procedure Chapter 17 Section 25 could have an additional clause that regulates the use of tax audit reports as evidence. The following is presented as the additional clause to be added to the current legislation.

*Oikeudenkäymiskaari*
*17 Luku 25.3 §*
*Edellä tässä pykälässä esitetystä poiketen ei rikosasiassa voida todisteena vedota verotusmenettelystä annetun lain (1558/1995) 14 §:n tai oma-aloitteisten verojen verotusmenettelystä annetun lain (768/2016) 24 §:n perusteella toimitetusta verotarkastuksesta annettuun tarkastuskertomukseen tai siinä esitettyyn, ellei kyseessä olevan tarkastuksen kohteena oleva verovelvollinen ja rikosasian vastaaja anna suostumuksiaan tarkastuskertomuksen käyttöön todisteena.*

*Translation:*
*By way of derogation from the provisions of this Section, the tax audit report submitted pursuant to Section 14 of the Act on Assessment Procedure (1558/1995) or Section 24 of the Tax Prepayment Act (768/2016) may not be relied on as evidence in criminal proceedings unless the taxpayer subject to the audit and the defendant in the criminal case give their consent to the use of the audit report as evidence.*

Because the amendment concerns the Code of Judicial Procedure and would prohibit the use of tax audit reports as evidence only in Court proceedings, it would not negate the possibility that police could still use the report during their criminal investigation. This would allow the police to utilize the findings of the tax inspector but would force them to conduct their own investigation

instead of just relying on the tax audit report as such. In practice, the situation could proceed as follows:

1. Based on the tax audit findings the tax inspector concludes that the audited company has avoided taxes by doing undeclared cash sales.
2. Tax authorities would impose the penal taxes on the company based on the estimations made by the inspector.
3. Tax authorities would inform the police to start their investigation to find out if the representative of the company has committed a crime.
4. Police would conduct the investigation based on the tax authorities' findings, but they would have to provide evidence that a crime was committed, because the tax audit report could not be used as evidence in Court.
5. If no evidence supporting the claims of the tax inspector cannot be found, the criminal investigation would be dropped, and the suspect would not be prosecuted.
6. If the police find the evidence to support the tax inspectors claims, the suspect could be prosecuted.
7. In Court, the prosecution would not present the tax audit report as evidence but instead would rely on the investigation done by the police.

This solution would not diminish the meaning of tax audits as it would not have any effect on the financial interests of the Government. Unlike the broad interpretation of the right against self-incrimination, this method would not allow the taxpayer to withhold any information during tax proceedings just based on the fear of prosecution. Tax audits would still be conducted normally, and if needed, the taxation of the taxpayer could be evaluated based on the audit results and penal taxes could still be imposed for the taxpayer's neglect to fulfill their obligations. Tax crimes would be investigated by the police and tax audit reports could still be used as bases for the investigation. This should not mean that the findings of the tax inspector could be trusted without additional proof. Of course, this would add to the workload of the police, as they would have to conduct the same investigation and question all the same people that the tax authorities have already done. However, according to the current legislation, this is already the job of the police so analytically nothing would change.

The idea is not to improve the chances of financial criminals to get scot-free but to make sure that these crimes are inspected without hindering individual legal protection.

# CONCLUSION

Upholding the balance between the rights of the defendant and the state is important. The purpose of the research was to find out what evidentiary value is given to tax audit reports by Finnish law, how it affects the balance of these rights, and how the balance could be guaranteed so that one does not suffer at the expense of the other.

In the Finnish legal system, free evidence theory is a key principle related to litigation. It consists of two components. Free production of evidence means that the Court can, in principle, rely on any fact and by any means of evidence in its decision as evidence. On the other hand, according to the free evaluation of evidence, the Court is free to consider what evidentiary value it gives to each piece of evidence.

However, free evidence theory does not imply arbitrariness or intuitive reasoning, but the Court must thoroughly and equitably evaluate the evidentiary value and relevance of the evidence presented in the case. The Court must, after careful consideration of all the issues raised, decide what must be considered true in the case. In addition, the Court must give reasons for its decision.

In criminal proceedings, the presumption of innocence and the burden of proof are also key principles in the evaluation of evidence. These are based, above all, on the fundamental and human rights of the defendant. In a criminal case, the prosecutor always bears the burden of proof in respect of all the elements of an offence and the defendant must be presumed innocent until otherwise proven.

The tax audit and the resulting tax audit report play a key role in the administrative tax procedure. In a tax audit, the tax authority strives to ensure that taxes are assessed according to the correct

criteria. In tax audits, the tax inspector has an extended right of access to information. The tax proposals contained in the tax audit reports are based on the tax inspector's assumptions and conclusions on the findings done during the audit. If in the opinion of the tax inspector, a reliable statement from the taxpayer is not available, the reasons and payable taxes may also be assessed.

The tax audit is an administrative procedure and does not comply with the above-mentioned principles of proof or legal protection of the defendant in criminal proceedings. Nevertheless, tax audit reports often play a key role in financial crime cases. In this study, I have discovered that tax audit reports hold high evidentiary value as evidence in financial crime cases. This is because of the trust created by the position of the tax inspectors and the fact that obtaining evidence in financial criminal cases may be difficult in some instances.

As the tax audit reports have been found to have a high evidentiary value, it is problematic that they are not prepared in accordance with the principles of legal protection essential for the legal protection of the defendant. I have tried to find a solution, which would take into account the financial interest of the Government, the legal protection of the defendant, and the implementation of criminal liability.

In practice, the only legislative change would be to add a new clause to Chapter 17 Section 25 of the Code of Judicial Procedure, which would prohibit the use of tax audit reports as evidence in a criminal case without the consent of the taxpayer. The tax audit report can still be used as a basis for the criminal investigation, but the criminal investigation should aim to build a sufficiently true and probable picture of the course of events so that there is no serious doubt as to the defendant's guilt.

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# Appendices

## Appendix 1.

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