

Expatriate Tax Planning

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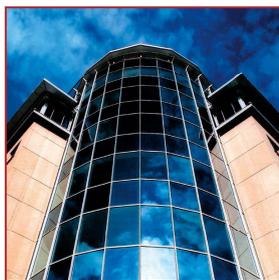
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ZVĒRINĀTA ADVOKĀTA BIROJS
ADVOKĀDIBŪROG
TEISES BIŪRAS

ATTORNEYS AT LAW
RECHTSANWÄLTE
D'AVOCATS

ASIANAJAJOIMISTO
ADVOKATER
ADVOKATFIRMAN

Avoidance - acceptable

Evasion - non acceptable

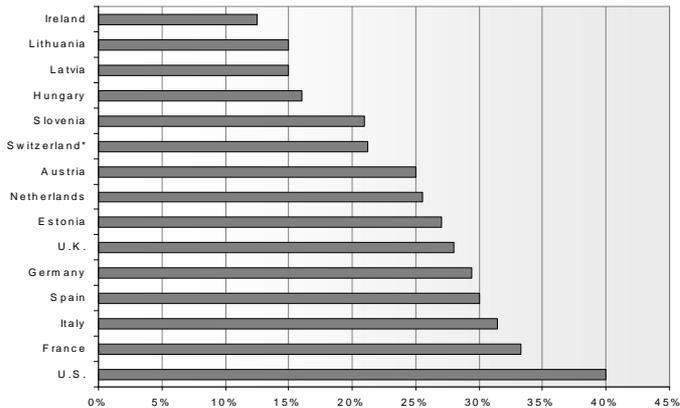
Al Capone

The granddaddy of 'em all. Legend has it that the notorious gangster once remarked that tax laws were a joke because "the government can't collect legal taxes on illegal money."

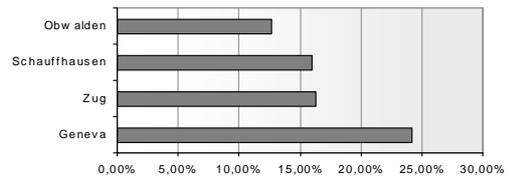


The IRS charged the infamous Chicago mob boss with failure to pay four years' worth of taxes. Capone was sentenced to 11 years in jail and an \$80,000 fine in 1931.

Average tax rates applied to corporate income



*Swiss cantons



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Residency

Becoming Estonian resident

- 183 days in any 12 month period
- Day count
- Residence/domicile in Estonia
- Residents – taxable on worldwide income
- Non-residents – on income derived in Estonia



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Dual residency



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Tiebreaker test

Estonia

- Home
- Vital connection
- Habitual dwelling
- Passport



Estonian resident

Spain

- Home
- Vital connection
- Habitual dwelling
- Passport



Spanish resident

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Boris Becker

The German tennis great avoided jail in 2002 when he was convicted of tax evasion. He admitted he lived in Germany while claiming to reside in Monte Carlo. He was given two years' probation and fined \$500,000.



He decided he didn't want to pay any more taxes in Germany, and moved to tax heaven in Switzerland.

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Social function

According to legal filings and Mr. Gaines-Cooper's Web site, the 72-year-old entrepreneur kept a residence in Hentey-on-Themes, Oxfordshire, and returned frequently to the U.K. for business and social functions. His son was also born in U.K. And attended an English boarding school.

A nonresident must "demonstrate a strict break from former social and family ties within the U.K.," the judges said in their ruling.



Racing driver Lewis Hamilton



Terra Firma founder Guy Hands

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Estonia



Taxes of Employer

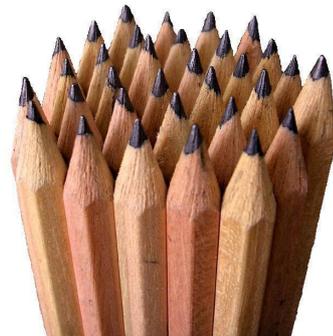
- Corporate Income Tax – **0%**
- Value Added Tax – **20%**
- Social Tax – **33%**
- Unemployment Tax – **1,4%**
- Income Tax Payable on **Dividends – 27%**

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Taxes of Employee

- Unemployment Tax – **2,8%**
- Pension Fund – **2%**
- Non-Taxable Income **EEK 2250 / EUR 144**
- Personal Income Tax – **21%**



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Dividends

Taxpayer is distributive company, 27% CIT applies in distribution moment.

Shareholder have no tax obligation.

No difference between:

- legal or natural person
- resident or non-resident
 - no matter of holding time of shares
 - no matter of the amount in a share capital of the payer
 - possible to take out dividends every month



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Dividends

Allocated dividend amount	100 000 EEK
Income tax $100\,000 \times 21/79$	26 582 EEK
The shareholder receives	100 000 EEK
The company pays	126 582 EEK



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List of Low Tax Territories

Antilles	Hong Kong (Sjangana)	Olderne
Andorra	Isle of Man	Panama
Anguilla	Jamaica	Qatar
Antigua & Barbuda	Jersey	San Marino
Aruba	Jordan	Seychelles
Bahamas	Jisbuty	St. Helens
Bahrain	Kenya	St. Kitts and Nevis
Barbados	Kuwait	St. Pierre and Michel (France)
Belize	Labuana (Malaysia)	Samoa
Bermuda	Lebanon	Santome and Prinsipi
British Virgin Islands	Liechtenstein	St. Lucia
Brunei Darussalam	Liberia	St. Vincent and Grenada
Cayman Islands	Maldives	Tahiti (French Polynesia)
Cook Islands	Macao	Tonga
Costa Rica	Mauritius	Turks and Caicos Islands
Dominican Republic	Marshall Islands	United Arab Emirates
Ecuador	Monaco	Uruguay East Republic
Gibraltar	Montserrat	Vanuatu
Grenada	Nauru	Venezuela
Guam	New Caledonia	Virgin Islands (USA)
Guatemala	Niue (New Zealand)	Zanzibar Islands (Tanzania)
Guernsey		

- Kampione, Madeira, St. Maria Island (Portugal) are no longer low tax countries

EU Planning Opportunities

Cyprus

- CIT – 10%
- No withholding tax from dividends, interest, royalties

Malta

- CIT – 35%
- Tax refund system:
- 6/7 refund for dividends
(Results in effective CIT rate of 5%!!!!)
 - 5/7 refund for passive interest and royalties



Resident receives dividends from abroad and distributes in Estonia in second time

Received from low tax territory- 27% CIT in distribution moment



Received from EU or third countries:

- Holds **more than 10%** of shares-0% CIT in distribution moment
- Holds **less than 10%** of shares- 27%- tax paid in EU in distribution moment

The income tax paid abroad may be deducted from the taxable amount of profit distributed in Estonia.

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Reductions

Corporate income tax 27% is not charged from non-resident shareholders



- reduction of share capital
- payback of shares
- payments upon liquidation

Estonian residents have tax obligation in such type of income from 2009.

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Taxation of Cars

Using private car for job purposes:

- Compensation without log of the use of car - 1000EEK per month.
- Compensation with log of the use of car – 4000 EEK per month.

Possible to pay summarized compensation.

Exceeding amount of compensation is taxed with

Fringe Benefit Tax:

Corporate income tax 27% + social tax 33%



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Tips

- Tax Treaties
- Leasing labor forces
- Salary for board member or buying management service?
- Salary or dividend?
- Dividend or loan?
- Liquidation through reorganisation?



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Estonian-Netherland Tax Treaty



In general: If non-resident sells a shares in Estonian Company, the income received is not taxed.

- Except the shares in “real estate company”, in case non-resident sells the real estate company`s shares, he is taxed with 21% income tax.
- In Tax Treaty: Real estate company`s sell of shares is not taxed in Estonia.
- Therefore is possible to avoid Estonian Income tax even in foreign investors, if they establish between Estonian real estate company and mother company a Netherlands company.

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Cyprus-Ukraine Tax Treaty

- The treaty allows to tax most types of incomes in the receiving resident country (dividends, interests, income from sold shares, and income from sold real estate company shares).
- Dividends and income from sold shares are **not taxable in Cyprus.**
- Even if Estonia does not have the tax treaty with Cyprus,
Cyprus does not tax the dividends distributed to non-residents or income received from sold shares.
- Therefore is possible to distribute dividends from Ukraine to Estonia with 0% income tax, using the **Cyprus mother company.**



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Selling Shares Through a Personal Company

- Estonian OÜ only owner X had 1000 Estonian Telecom shares, what he had bought in 1999 with price 10 EEK per share.
- August 2009 made TeliaSonera a merger offer to Estonian Telecom, to buy its shares with price 93 EEK per share.
- September 2009 sold X his Estonian Telecom shares to his personal OÜ with price 10 EEK per share. As X sold his shares with same price as bought- no income for person X will be taxed.
- October 2009 sold X –s OÜ Estonian Telecom` s shares to TeliaSonera with price 93 EEK.
- OÜ got income of 83 EEK per share.

(Court cases 3-3-1-52-09 and 3-3-1-59-09)

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Salary for Board or OÜ Management Service?

- X has an AS, who offers a management services for OÜ.
- Therefore X is a board member of an OÜ but without receiving a salary, he submits a management service invoice to OÜ.
- An OÜ is the only client to AS, facilities for work is issued from OÜ and AS, X is working in both offices.
- One purpose for service contract is reducing the responsibility of a board member.



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Salary or Dividend?

- Person X is in the same time owner and board member in OÜ.
- Every month pays OÜ to X 3300 EEK salary and 45 000 EEK dividends.
- Salary is taxed with social, income and unemployment insurance tax, dividend is taxed with only income tax.
- Additionally to board members tasks, X offers services to OÜ clients.



Dividend or Loan?

- Finnish mother company has daughter company in Estonia, who receives every year income, but profit is not distributed 10 years.
- Estonian company gives every year loan to mother company in same sum as profit of Estonian company.
- Loan is not paid back, mother pays every year a little interest to daughter.
- For justifying the little interest, is organized the transfer pricing documentation.



Liquidation Through Reorganization?

- Netherlands mother company has daughter AS in Estonia, who has daughters X and Y in Estonia. Mother plans to stop activities in Estonia.
- X has 100 million EEK undistributed profit and Y has 50 million EEK undistributed profit.
- AS incorporates X and Y to himself, in this case the dividends distribution is not taxed.
- Netherlands mother establishes new company NEW AS. Shares of AS is transferred as non-monetary payment as contribution sum for NEW AS.
- AS and NEW AS join, NEW AS is liquidated.
- Whole profit is paid to Netherlands mother with 0% tax as proceeds of liquidation.



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Tax and Customs Board

The transaction is taxed if there is no economic substance

Office is detecting:

- Parts of transaction- their connections?;
- Sequence of transactions- one transaction without others is meaningless?
- Is this sequence of transaction planned?
- Some element in transaction does not have an economical substance?
- Unnaturalness in sequence of transaction;
- Time between transactions- suspiciously fast?



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Three Countries.
One Firm.

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