

Expatriate Tax Planning 2011

Annika Träss

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

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.

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

Becoming an Estonian resident

Becoming an Estonian resident

- 183 days in any 12 month period
- Day count
- Residence/domicile in Estonia

Taxation

- Residents – taxable on worldwide income
- Non-residents – income derived in Estonia

Company is Estonian resident, if it is established under Estonian law

NB!

- Only residents may use the Tax Treaties!
- Permanent Establishment is not a resident!

Dual residency



Tiebreaker test

Estonia

- Home
- Vital connection
- social, economical
- Habitual dwelling
- Passport



Estonian resident

Sweden

- Home
- Vital connection
- social, economical
- Habitual dwelling
- Passport



Swedish resident

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

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.

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

Social function

Owner of Terra Firma, 13 billion private equity firm, Mr. Gaines-Cooper, 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

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

Offshore territories - 100 % earnings taxable in Estonia.



Andorra	Anguilla	Antigua and Barbuda	Arab Emirates (Dubai)	
Bahamas	Bahrain	Barbados	Belize	Bermudas
British Virgin Islands	Brunei Darussalam	Cook Islands	Costa Rica	The Republic of Djibouti
Dominica	The republic of Filipinas	Gibraltar	Grenada	Guam
Republic of Guatemala	Guernsey	Netherlands Antilles	Hong Kong	Jamaica
Jersey	Cayman Islands	Katar	Republic of Kenya	Kuweit
Labuan	Liberia	The Republic of Liberia	Republic of Mauritius	Republic of Lebanon
Macau (Aomen)	Republic of Maldives	Republic of the Marshall Islands	The Principality of Liechtenstein	The Principality of Monaco
Montserrat	Republic of Nauru	Niue Island	Oman	Panama
Puerto Rico	French Polynesia	San Kitts and Nevis	Saint Lucia	Saint Vincent and the Grenadines
San Marino	Republic of Chii	Turks and Caicos Islands	Oriental Republic of Uruguay	New Caledonia
The Republic of Vanuatu	Republic of Venezuela	Virgin Islands (U.S.)		

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

Detection of offshore accounts



Banks obligation to disclose

- taxpayers does not file declarations



Swedish resident

- Stay more than 6 months over 2 years
- Temporary interruption does not count in as spent outside Sweden
- 5.5 months in Sweden
- 3.5 months away – included or not in stay?
- 6 months agreement

Answers

- 3.5 month decided as “temporary” as 3.5 month are less than later stay:
- 3.5 less than 5.5 - temporary interruption
- 6 is more than 3.5 - temporary interruption
- 3 in Sweden
- 3 away
- 3 in Sweden temporary interruption



Swedish 6 month rule

- Rule
 - Swedish maximum marginal tax rate 57% (above 495000 crowns)
- Work in one or more countries
- In Sweden less than **36 days**
 - no tax in Sweden
- Income is taxed in Estonia



Swedish 12 month rule

- Work in one country
- In Sweden less than **72 days**
- Even if no tax according to Latvian law
- Social fee in Sweden:
 - intention to stay for less 12 month – 31,42% and 7%
 - intention to stay for more than 12 month – no social fee



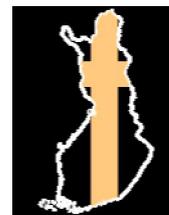
Norway

Resident in Norway:

- Stays at least 61 day in Norway
- Himself or closely related person (spouse, cohabitant, minor age children)-61 day rule applies
- Live 10 years in Norway, break residency after 3 year away, except if maintain a home in Norway

Finland

- **Non residents** – 35% PIT for a period of 48 months
- **Residents** – progressive from **8,5 -31,5%**
- ECJ - Turpeinen
- Non – residents & residents treated equally



Tax resident in Finland- 72 day rule

- Latvia has right to tax
- Work outside Finland 6 month
- Visits to Finland less than **72 days** (6 days per month)
- Finnish tax resident – 3 years after left Finland
- The income tax rate in 2009 was between 7%-30.5%.
- 6 month rule makes earnings acquired while working abroad not subject to Finnish income tax.
- This rule does not apply in situations where the person has earned his income by working in a Finnish governmental position abroad or in Finnish water or aircrafts.

Finland

- Even if the 6 month rule applies and the income earned in a host country would be tax free in Finland, the employee must normally pay national insurance tax to Finland (about 2-3%).
Even the income that comes under the six month rule will still have to be listed in the Finnish tax certificates.
- National insurance tax paid in the host country cannot be deducted in Finland but can be claimed back in the Finnish tax return in part 3.
- The employee must keep the receipts.

Finland

- The application of the 6 month rule is not certain at the beginning therefore, the employer will report to the tax authority in Finland assuming the earnings would be taxed in Finland.
- When the application of the rule is certain then the tax authority or the employer will return the excess amount deducted as tax.



Denmark

Tax resident in Denmark:

- Work outside Denmark 6 month
- Visits to Denmark 84 days per year
- House abandoned – break of residency on 1 day
- Tax applies (not paid) in host country
- Marginal tax rate: **63%**



LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

Denmark

- Income tax – taxpayers are subject to a national income tax, national surtax, municipal tax
- Municipal tax – 22,7%-27,80% depending on county
- National surtax – 8%
- National income tax:

5% basic rate on income up to DKK 347200

6% medium rate on income exceeding DKK 347200

15% top bracket rate on income exceeding DKK 347200

28% capital gains on shares, dividend for income up to DKK 48300

43% on share income from DKK 48300 up to DKK 106000

45% on excess of DKK 106000 on share income

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

EU Planning Opportunities

Cyprus

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



LAW FIRM
GENCS VALTERS

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

Riga, March 10, 2011

Prime time for inheritance planning

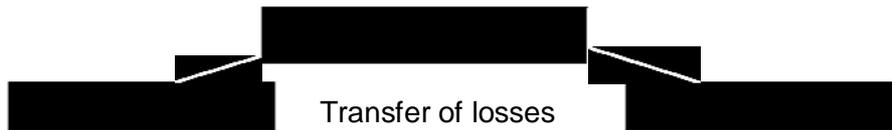
“IT IS POSSIBLE TO TURN INVESTMENT LOSSES TO A TAX ADVANTAGE, IF DECISIVE, CO-ORDINATED STEPS ARE TAKEN RAPIDLY”

“While the market turmoil has inflicted significant pain on many, this is a golden opportunity for tax planning. It is possible to turn investment losses to a tax advantage, if decisive, co-ordinated steps are taken rapidly.”

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

Cross - border Group Relief- Marks & Spencer case



- Subsidiary has exhausted the possibilities available in its state of residence of having those losses taken into account for the accounting period concerned and for previous accounting periods
- Use losses only in 1. contry
- Violation of Freedom of Establishment?

E 101 (A1) certificate

- Sent for 12 month – pay in home country
- Pay where work, regardless where is residence
- Work in 2 states – pay where is residence
- No residence in working states – where company's legal address
- Several employers – where is residence country



Permanent Establishment

"Permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Permanent Establishment

- Low in costs;
- Short in time (up to 2 days);
- Possibility to start activities at once;
- No registration at local Center of Registers (only tax inspection).
- Minimal documentation
- Foreign legal entity is responsible for its activities in Estonia (taxes).



Permanent Establishment: Agent

- A company is considered acting not through its permanent establishment in the case if the company only carries its commercial activities through its independent representative. The respective representative will need to prove that he is also engaged in other activity than representation of this company = > **no necessity to incorporate Permanent Establishment.**
- If all or almost all the activity of the representative is carried out in the name of one company, this person is not considered holding the status of independent agent (representative). => **Incorporation of Permanent Establishment.**

Economic interests

Italy fines fashion pair in an alleged tax evasion

- Designers failed to declare money they earned while working in Italy

Italian tax laws require anyone who earns more than half of their revenue in Italian territory to declare their earnings. They also state that people who locate the center of their economic interests in Italy are subject to taxation regardless of whether they declare residency outside the country.



Estonia: CIT as a profit tax

0% when no distribution

27% income tax in case of distribution:

- Profit distributions - Dividends
- Fringe benefits
- Gifts
- Donations and costs of entertaining guests
- Expenses and payments not related to business



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



Resident receives dividends from abroad and distributes 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.

Taxation of cars



Private car for company purposes: Tax-Free Compensation:

- Without log- 64 EUR per month;
- With log- 256 EUR per month.

Company car for private purposes: Fixed Tax Base:

- Without log- 256 EUR per month;
- With log- 64 EUR per month.

Fringe benefit tax: 27% CIT + 33% social tax + 20% VAT

Gifts

Taxed with fringe benefit tax: 27% CIT + 33% social tax.

These are NOT gifts:

- Product samples, degustation, free product training, commercial printouts;
- Bonuses and discounts available for all clients;
- Benefits added to the product for free;
- Reimbursement of **necessary expenses of sale** for seller;
- Assigned earnings received from third persons.

Personal income tax

Residents- worldwide income

Non-residents- income received from Estonian sources

21% PIT is withheld on incomes as:

- Salary
- Board Members fee
- Rent
- Interests
- Pensions, lottery prizes, grants

Annual basic exemption- **1726 EUR**

Overpaid income tax is refunded once a year.

Double Tax Treaties



Estonia has with 45 countries.

- Free dividends from Netherland mother company;
- China-Germany VS China-Estonia;
- Free license fee from Israel;
- *Liberal Arts* and free pension in Portugal and Spain.

NB! *Treaty Shopping, Cherry Picking*

Estonian 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?

Tips:

- OÜ without contribution;
- Leasing labor forces;
- Salary for board member or buying management service (related persons- transfere pricing rules)?
- Salary or dividend?
- Dividend or loan (debt pushdown)?
- Liquidation through reorganisation (sale of assets VS sale of business)?

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011

Three Countries.
One Firm.

GENCS VALTERS LAW FIRM

LITHUANIA

A.Tumeno street 4, 6th floor
LT 01109, Vilnius, Lithuania
Tel: +370 52611000
Fax: +370 52611100

LATVIA

Kr. Valdemara street 21, 3rd floor
LV 1010, Riga, Latvia
Tel: +371 67240090
Fax: +371 67240091

ESTONIA

Narva Mnt 5
10117, Tallinn, Estonia
Tel: +372 6191000
Fax: +372 6191001

WWW.GENCS.EU

LAW FIRM
GENCS VALTERS

Tallinn, April 18, 2011