

## THE USE OF TAX PLANNING SCHEMES BASED ON THE DIFFERENTIAL TAXATION OF LABOR INCOME AND CAPITAL IN ESTONIA

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### Abstract

The current paper covers one of the tax optimization schemes popular in Estonia – full or partial replacement of labor income with dividends. Such scheme is used by some owner-managers as the regulation concerning emoluments of members of management body is very flexible. The main incentive to use the scheme is to reduce tax burden as dividends are only subject to income tax but emoluments to the members of management body are also taxed with the social tax. Basic results show that considered schemes are widespread. We estimate that due to replacement of salaries and wages with dividends there was a significant loss in social tax revenues in Estonia during 2005-2008. In majority of the sectors average dividends of owner-managers in 2008 were higher than their average salaries. Also, the average amount of owner-managers' emoluments in majority of the sectors was below the national monthly average salary, in some cases it was even below subsistence level.

**Keywords:** tax planning, income taxation, personal finance

**JEL Classification:** D14, H2, J3

### Introduction

Benjamin Franklin (1706-1790) once said: “... *in this world nothing is certain but death and taxes*”. While the first part of this statement is still 100 percent correct, last isn't. A financially aware taxpayer can sometimes choose when, to whom and how much to pay taxes. While some of the actions taken by natural and legal persons to change their tax burden are clearly illegal (e.g. under-the-table pays) – these are classified as tax evasion – others are not. According to different verdicts of European Court taxpayers can take into account several factors (including taxes) when making their decisions and they are not obliged to choose actions/behavior that results the highest possible level of taxes (Tallinna Ringkonnakohtu...3-08-364). Instead, it is quite natural to assume that most taxpayers try to maximize their after-tax income and as long as their actions correspond with the law, everything is fine. Unfortunately, it is almost impossible to write laws that cover every shade of human behavior and that's why numerous so-called grey areas still exist. Sometimes tax optimization schemes may be well in accordance with the formality of law, but not with the meaning of law.

The aim of the current paper is to investigate the use of one of such schemes – namely full or partial replacement of wages or salaries<sup>1</sup> with dividends. It is easy to understand why such schemes emerged in Estonia. Remuneration for work is the subject to income tax, social tax and unemployment insurance payments. Dividends, on the other hand, are only subject to income tax. The problem spans beyond the borders of financial economics being topical in business ethics and corporate social responsibility.

The paper is structured as follows. The first section presents a short theoretical overview of different types of tax planning activities as well as lists main principles that should be followed during such activities. Second section describes the rules according to which income from capital and labor are taxed in Estonia and presents effective direct tax rates on dividends and labor income. The third section analyzes how widespread full or partial replacement of wages and salaries with dividends in Estonia is.

### **Main types and principles of effective tax planning**

The cornerstone of modern financial theory is the value maximization principle. The value of an investment is determined by the size, timing and risk level of expected future cash flows generated by that investment (Brigham *et al.* 1999). The risk level of expected cash flows is reflected in the discount rate and the timing is taken into the account in discounting process. As most investors care about after-tax cash flows, taxes affect almost every financial decision both on corporate<sup>2</sup> as well as personal<sup>3</sup> level.

A government uses tax system to achieve variety of social goals and therefore sometimes tax rates vary across different economic activities, across different types of taxpayers and over time. These differential tax rates, in turn, provide strong incentives for taxpayers to engage in tax planning (Scholes and Wolfson 1992). The existence of different tax regimes in different countries expands possibilities for tax planning even further.

The goal of the effective tax planning is not tax minimization but maximization of after-tax return for an investor. According to Scholes *et al.* (2005) effective tax planning requires the planner to consider the tax implications of a proposed transaction for all of the parties to the transaction (1); to consider not only explicit taxes but also implicit taxes (taxes that are paid indirectly in the form of lower before-tax rates of return on tax-favored investments) (2); and to recognize that

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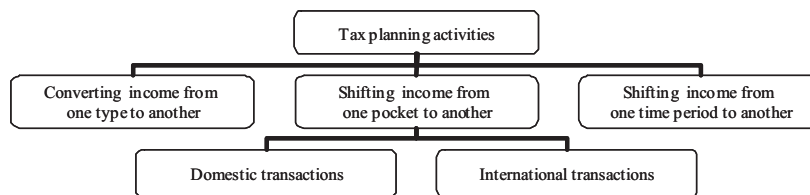
<sup>1</sup> Albeit there is a very important difference between terms 'salary' and 'wage' in English-speaking countries in the present paper we use these terms interchangeably. Those who are not familiar with nuances may get a detailed explanation e.g. on the website of the Australian Taxation Office (<http://www.ato.gov.au/individuals/content.asp?doc=/content/20083.htm>)

<sup>2</sup> An excellent review of literature on the topic can be found in Graham (2003).

<sup>3</sup> Several dynamic tax avoidance strategies have been proposed by Miller and Scholes (1978), Stiglitz (1983), Chaplinsky and Seyhun (1990), Scholes et al (2005).

taxes represent only one among many business costs, and all costs must be considered in the planning process (3).

We can distinguish between three types of tax planning activities (see figure 1).



**Figure 1.** Types of Tax Planning. (Adopted from Scholes *et al.* 2005)

When investor expects tax rates to decrease or remain constant over time, one desirable goal is to postpone the moment of taxation as further in the future as possible. Even when tax rates are expected to rise a little, one could benefit from delaying the recognition of income due to the concept of time value of money. However, if one expects a sharp increase in tax rates, acceleration of the recognition of income becomes rewarding.

Another method to reduce income tax bill is to ensure that an additional income will be attributed to a family member (in case of individuals) or subsidiary (in case of corporations) with the lowest marginal tax rates. Such behavior is especially profitable in countries with progressive income tax system and also in case of multinationals. We distinguish between two subtypes of such schemes: those that are purely under the jurisdiction of one tax authority (domestic transactions) and those that have an international scope (international transactions). Tax authorities around the world try to enforce the *Substance-Over-Form* and *Business-Purpose Doctrines* when dealing with the contracts between related parties (Scholes *et al.* 2005). They are much less concerned when contracts are written between parties with opposite interests as in those cases the use of arms-length prices is usually a rule (*Ibid*).

The third type of tax planning activities includes transactions which convert one type of income into another. In many countries “ordinary income” (like wages, dividends, interests etc) is taxed more heavily than capital gains. Sometimes the distinction has been made between “active income” and “passive income”. In the next two sections we analyze one relatively widespread scheme in Estonia that relies on differential taxation of dividends vis-à-vis compensation for work.

Many tax optimization schemes involve several types of activities listed above (Stiglitz 1985). In fact, the full or partial replacement of salaries with dividends not only consists in converting one type of income to another but also may include the postponement of taxation. For taxation of corporate profits, Estonia uses so-called distributed profit taxation system under which the moment of taxation is shifted from the period of earning the profit to the period of distributing it. The owner-

manager can therefore freely choose when to distribute the profits and therefore also when to pay corporate income taxes<sup>4</sup>.

The use of different tax avoidance schemes could heavily reduce the redistributing effect of tax system and tax revenue collected by the government. For example, Gordon and Slemrod (1988) estimated that in 1983 US tax system collected no net revenue from taxing capital income despite high marginal taxes on capital at the time. Lang *et al.* (1997) concluded that various legal and semi-legal tax write-off opportunities dramatically reduced the effective marginal tax rates of high-income households in Germany. Similar tendencies can also be found in other countries.

### **Taxation of labor income and capital in Estonia**

In Estonia, like in many other countries, the income from capital is taxed lower than income from labor. Income from capital can take several forms:

- 1) capital gain,
- 2) current income, which usually takes one of the following forms:
  - a) interests,
  - b) dividends and other forms of profit distribution,
  - c) rental income.

Dividends and other forms of profit distributions paid by Estonian companies are taxed by income tax (at tax rate 21% on gross dividends in year 2010) on corporate level and do not constitute a part of individual's taxable income. There are no taxes on undistributed corporate profit since the tax reform in 2000. Other forms of capital income are taxed (with few exceptions<sup>5</sup>) by income tax at individual level after they are realized or received by a natural person. No other taxes are levied on capital (with the only exception of land tax).

The remuneration of labor can also take several forms, from which most usual are:

- 1) wages and salaries,
- 2) emoluments paid to a member of a management or controlling body,
- 3) fringe benefits.

While all these payments are subject to both income tax and social tax (with rates of 21% and 33% respectively in year 2010), only wages and salaries are also subject to unemployment insurance payments (tax rate 1.4% paid by employer plus 2.8% paid by employee in year 2010). Wages and salaries as well as emoluments paid to a member of a management or controlling body constitute the income from which basic tax exemption is deductible. No such possibility exists for fringe benefits (see table 1).

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<sup>4</sup> In 2004, the Ministry of Justice made the proposal to introduce mandatory dividends in order to protect minority shareholders rights. This proposal was actively opposed by entrepreneurs and was eventually discarded (Sander 2005).

<sup>5</sup> Income tax is not charged on interest paid to a natural person by a credit institution, which is resident of European Economic Area.

**Table 1.** Different types of income and their taxation in Estonia

	Income tax (payer/payee)	Social tax	Unemployment insurance payments	Constitutes the income from which basic exemption is deductible
Remuneration of labor				
Wages and salaries	-/+	+	+	+
Emoluments paid to the member of a management or controlling body	-/+	+	-	+
Fringe benefits	+/-	+	-	-
Compensation for capital				
Dividends and other profit distributions	+/-	-	-	-
Capital gain	-/+	-	-	+
Interests	-/+	-	-	+
Rental income	-/+	-	-	+

Note: Table does not contain any payments to the second pillar of Estonia's pension system, as joining to funded pension system was mandatory only to younger employees.

In decision-making process one should rely on marginal tax rates. In our case several different taxes affect the formation of after-tax income, and therefore we calculated effective direct tax rate (*EDT*) as follows<sup>6</sup>:

$$(1) \quad EDT = 1 - \frac{\text{after tax personal income}}{\text{total payments made by the firm}}$$

The following table presents marginal effective direct tax rates calculated by using the formula 1. It should be mentioned that marginal effective direct tax rate depends on whether a person earns amount less than income tax-free minimum (27000 EEK or approximately 1726 EUR a year).

**Table 2.** Marginal effective direct tax rates in Estonia (in 2010)

Type of Income	Taxable income per year	
	< € 1726	≥ € 1726
Wages and salaries	27.7%	42.9%
Emoluments paid to a member of a management body	24.8%	40.6%
Fringe benefits	40.6%	40.6%
Dividends	21.0%	21.0%
Interests and rental income	0.0%	21.0%

Source: Authors' calculations on the basis of Estonian Income Tax Act.

<sup>6</sup> Another method to estimate average effective tax rate on labor is to use macro data on aggregate labor income tax revenues and aggregate labor income (see e.g. Mendoza et al. 1994).

From the table 2, it appears that the tax burden in case of income from labor is approximately two times higher than in case of dividends or other forms of capital income.

To synthesize illustratively information contained in tables 1 and 2 we can use a hypothetical numerical example (see table 3 below). Let's say, an owner decides to withdraw cash from his/her company in net amount of 5000 EUR. Being aware of possibilities provided by Estonian legislation he/she can do it using basically four alternatives: (1) withdraw money as salary/wage (i.e. labor income)<sup>7</sup>; (2) pay out fraction of cash as minimum wage (approximately 278 EUR a month or 3336 EUR a year) and rest as dividends; (3) pay 100% as emolument to a member of managing board, and (4) pay 100% as dividends (full replacement). Of course, it is possible to take out cash as a combination of different incomes – effective direct tax rate will fall within limits of (1) and (4).

Additionally, calculations presented in the table are made on two different assumptions: (A) the person has a full-time job position outside of this hypothetical company where employer pays his/her social tax and also keeps account for income tax-free income, and (B) the person has not full-time position outside of this company.

**Table 3.** Comparison of basic cash withdrawal schemes – the aspect of taxation

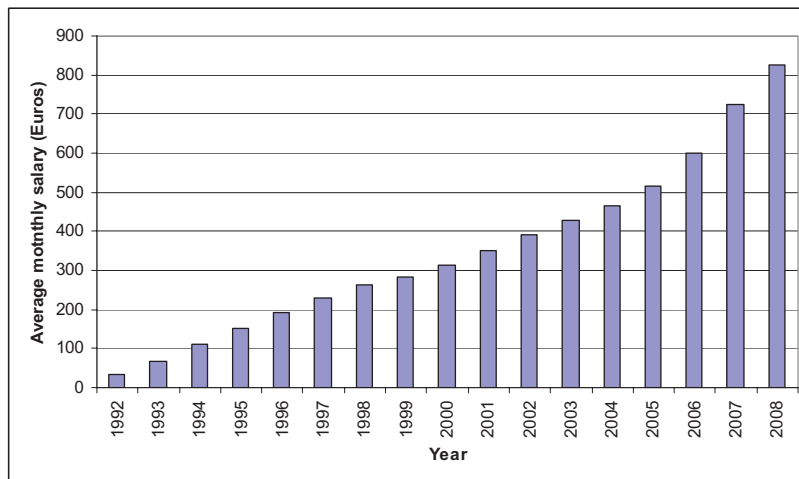
	Wage/salary		Partial replacement of wage		Emolument to a member of management		Full replacement of wage
	A	B	A	B	A	B	A=B
Net payout	5 000	5 000	5 000	5 000	5 000	5 000	5 000
Income tax	1 329	860	1 329	871	1 329	871	1 329
Social tax	2 149	1 977	1 101	1 101	2 089	1 937	0
Unemployment insurance payment	274	252	140	140	0	0	0
<b>Total payments</b>	<b>8 752</b>	<b>8 089</b>	<b>7 571</b>	<b>7 112</b>	<b>8 418</b>	<b>7 808</b>	<b>6 330</b>
Effective direct tax rate	42.9%	38.2%	34.0%	29.7%	40.6%	36.0%	21.0%

Source: Authors' calculations.

<sup>7</sup> Employees work in a company on a basis of an employment contract while members of the board operate on the basis of a contract which should be subject to regulations of authorization agreement of the Law of Obligations.

As we can see, total payments and hence, effective direct tax rate are highest in situation where cash is paid out as wage/salary vis-à-vis to other alternatives. In case the person does not have full-time job position outside his/her company effective direct tax rate is lower; however, we must consider things like health insurance and unemployment insurance benefit.

The Social Tax Act was enacted in Estonia already in 1991. Since then the average monthly salary has increased more than twenty times (see figure 2). While income tax rate has decreased from 26% to 21%, mandatory unemployment insurance was introduced in 2002. Due to a rapid increase in salaries and introduction of additional taxes on remuneration of labor, it is quite costly for companies to employ highly qualified employees. Several proposals have been made to set an upper limit for social tax and the intension of the current government is to reduce tax burden on labor (Estonian Taxes and...).



**Figure 2.** Average monthly salary in Estonia (in Euros). (Estonian Statistical Office)

It is highly questionable whether such big differences in effective tax rates are justified in the current situation. It has been argued that taxes on capital should be lower than taxes on labor income, due to the risks associated with capital investment (Lehis 2004). Most investments are indisputably risky. However, the level of risk associated with an investment into a new venture or into a listed public utility company is quite different, not to mention that some investment instruments (like government bonds or bank deposits) are almost risk-free (at least in nominal terms). Also, most firms enjoy limited liability which reduces risks taken by equity investors. The same does not apply for sole proprietors, who not only have unlimited liability but also have to pay social tax (with the upper limit of € 16 514 per year) on their net income. The risk argument is also weak due to the fact that investing into

human capital is risky too. Unemployment, serious illness, accidents, maternity leaves and changes in technology may sharply decrease the return on investment into human capital. Of course, substantial amount of these investments are actually financed by the state<sup>8</sup> and therefore taxing return is justified but due to free movement of labor within the EU it is not certain that it can be taxed by the state that actually made the investment.

The second argument for taxing remuneration for labor higher than income from capital is that capital has higher mobility than labor. Tax competition between countries has been accelerated since the late of 1980 and by the end of millennium there were 35 countries (according to the OECD tax report) which complied with the definition of tax heaven and 47 countries with harmful preferential tax regime (Tammert 2005). European Commission (1997) argued that international tax competition has caused a shifting of the tax burden away from mobile capital toward less mobile labor. Estonia, like many other CEE countries, tried to attract foreign investments by reducing direct taxes on capital. The progressive income tax system was replaced with proportional income tax system with the same tax rate (26%) for individuals and corporations in 1994. Distributed profit based corporate taxation was introduced by Estonian government in 2000. In 2005, income tax rate was reduced to 24%, with further reductions that took place during next three years (2006-2008). Since 2008 the income tax rate has been 21% in Estonia. Also, several amendments to Income Tax Law have been made to eliminate the double taxation on dividends paid to non-resident investors and bilateral tax agreements have been signed with more than 40 countries (Topeltmaksustamise vältimise...). Since 2000, Estonia does not levy any tax on capital gain from the sale of securities by non-resident investors<sup>9</sup>.

Already in 2001 foreign investors ranked the problems associated with the shortage of highly qualified labor force as one of the main obstacles for foreign direct investments (Foreign Direct... 2001). Tax issues, on the other hand, were not considered to be very important obstacles (*Ibid*). In 2009, foreign investors were still mostly pleased with taxation in Estonia; although they were somewhat concerned with high level of payroll taxes (Varblane et al 2009). The latter also hindered the hiring of highly qualified labor force by Estonian companies, especially in the field of computer software development (*Ibid*).

### **The replacement of remuneration of labor with dividends**

The payroll taxes in Estonia are high and the marginal effective direct tax rate on labor income is more than two times higher than on dividends. This would make it

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<sup>8</sup> There are some papers that propose specific methodology to estimate effective tax rates on human capital (see e.g. Collins and Davies 2003).

<sup>9</sup> An exception: gains from a transfer of a holding of at least 10% in a company of whose property, according to the balance sheet as of the last day of the preceding two financial years, more than 50% is made up of immovables or structures as movables, which are located in Estonia.



very tempting to find some ways to reduce the tax burden. While, taxpayer should never base her decisions solely on taxes, but also consider other aspects associated with tax planning schemes, those other aspects are often relatively difficult to quantify.

Paying the social tax in Estonia grants the individual the state health insurance, benefits of which are largely independent of the amount of social tax paid by an individual (only temporary disability benefit is tied to the amount of tax paid) as well as the state old-age pension (the first pillar in Estonia's pension system). The latter is also only partly depending on the salary on which social tax is calculated. The national mandatory unemployment insurance grants the taxpayer compensation in case of losing her job and this compensation depends directly on the previous salary of the taxpayer<sup>10</sup>. Most of the benefits associated with the social tax and mandatory unemployment insurance are contingent, and some are granted to a person in a distant future (like pensions), and therefore the value of those benefits is almost impossible to find. These are the reasons why some taxpayers try to evade or avoid those taxes.

In their empirical study Kriz *et al.* (2008) found that payroll and income tax evasion in Estonia is most prevalent in small firms and in the construction and agricultural sectors. Evasion is more common among individuals who work part-time, are of non-Estonian ethnicity, have relatively short education, earn a low income and are men (*Ibid*).

While the replacement of remuneration for labor with dividends also is mostly prevalent in small firms, those who are engaged in such schemes are usually relatively wealthy individuals – owners and top managers of companies.

Estonian Tax and Customs Board has monitored the use of such schemes and concluded that these schemes have become more widespread in recent years (see table 4 below).

According to the analysis carried out by Estonian Tax and Customs Board the replacement of salaries with dividends accounted for 10-20% of total losses in expected social tax revenues (Buldas 2010).

Estonian Tax and Customs Board only counted those individuals that received more than 100 000 EEK ( $\approx$  6 387 EUR) in dividends from companies which they manage as board members and whose salary and emoluments for being the member of a management body is less than expected (see table 3). Taking into the account the fact that in 2008 in Estonia there were approximately 91 000 members of management board altogether, the partial or full replacement of labor income with dividends took place in 5% of cases. Our view is that the actual use of such schemes could be even more widespread.

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<sup>10</sup> However, there is a maximum amount of unemployment insurance benefit paid to unemployed: for 2010 it is approximately 886 EUR a month (Eesti Töötukassa ...).

**Table 4.** The use of the replacement of salaries with dividends scheme and estimated losses in social tax revenues in Estonia 2005-2009

	Year			
	2005	2006	2007	2008
Expected yearly salary (Euros)	12 383	14 430	17 389	19 806
Number of executives with salary less than expected and dividend income above € 6387	1924	2592	3974	4407
Number of executives with no salary and dividend income above € 6387	106	156	211	251
Expected losses in social tax revenues due to full replacement of salaries with dividends (million Euros)	4.05	6.75	12.22	15.67

Source: Buldas 2010.

We found that among companies with single owner-manager in many sectors the ratio of average dividends to average wage/salary expenditures was above 1 (on the aggregate level in 2008 this ratio was equal to 0.96); expectedly, among this set of enterprises there were companies operating in fields of financial services (except insurance and pension funding), real estate activities, management consultancy services, entertainment activities, wholesale and retail trade and repair of motor vehicles, construction etc. Albeit there were sectors where companies did not pay out dividends at all (e.g. manufacture of machinery and equipment, water collection and transport, sewerage inter alia) these companies represent very small fraction of total number of companies.

The propensity of companies to pay higher dividends vis-à-vis salary/wage may depend on size of a company (primarily in terms of employees). Based on our data it is not possible to state unanimously that this is a feature of smaller/larger companies in each sector but on a general level it is possible to observe higher ratio of average dividends paid out to average wage/salary expenditure among companies with lower sales revenue.

Estonian Tax and Customs Board has also indicated that total number of top executives (i.e. members of board) who has not received any salary or emoluments from their employer since 2005 was over 6000. In addition, there are almost 3000 board members who have not received any other income besides national old-age pension (Buldass 2010). In majority of the sectors monthly average salary of owner-managers in 2008 was below the level of national monthly average (825 EUR) with grand total average being on the level of 590 EUR. Another interesting finding is that approximately 20% of all owner-managers had income below subsistence level (ca 158 EUR a month in 2008) or no income at all which leads to thoughts about possible tax evasion.

Hazak (2007) confirmed that distributed profit taxation system has led companies to pay lower dividends and retain more profits. However, undistributed profits appear

to be partially retained as surplus cash, instead of being reinvested into long-term assets in companies' core businesses (*Ibid*). Therefore we propose that some owners use their firms as a piggy bank and withdraw the money (either legally as dividends or through illegal transactions) only when they need it for consumption or other purposes. Such behavior is further strengthened by declining income tax rates<sup>11</sup>, which increase the incentive to retain profits. However to confirm such proposition, one would need the data that is not publicly available.

From the legal point, it should be mentioned that Estonian Commercial Code (§ 314) stipulates that members of management or controlling body of companies may receive compensation for their work in accordance with their actual responsibilities and the financial situation of the firm. However, the Commercial Code does not establish the minimum amount of the emoluments. While such loose regulation gives companies necessary flexibility in times when company does not actually operate or is in deep loss, it also encourages owner-managers replace their salaries with dividends even when company is profitable. As no professional manager is willing to manage a firm without proper compensation, the replacement of salaries with dividends for owner-managers can be viewed as a kind of tax evasion. Alternatively, one could interpret such situation as an incentive for people to start and manage their own businesses; however, the basic principle of tax neutrality is violated as the sole proprietors are not given the same advantage. Estonian Taxation Law (§ 84) includes articles that allow tax authorities to overlook the legal form of the transaction if the form does not correspond to the substance of the transaction. In the recent case *State versus OÜ Wasp Project* the District Court decided that, in principle, dividend payments can be reclassified as emoluments to the member of controlling body of the company and taxed accordingly; however tax authorities should first give clear guidance to the taxpayers how to determine adequate compensation for the managers (Tallinna Ringkonnakohtu...3-08-364). However, these guidelines have recommended character, the Estonian Tax and Customs Board cannot force their fulfillment. Changes in the current situation may be expected only due to amending legal acts.

### **Conclusions**

As part of their financial management natural and legal persons have to deal with tax planning activities. The purpose of tax planning activities is not minimization of tax payments but maximization of after-tax income. While tax evasive optimization schemes and practices are clearly illicit others are compatible with the law. However, still numerous so-called grey areas exist as no legal act is able to cover all the aspects of economic activities.

In our paper we investigate the use of one of such tax optimization schemes – a partial or full replacement of wages (salaries) with dividends. Such schemes became especially popular in Estonia as remuneration of work is the subject to income tax,

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<sup>11</sup> When in 2000 income tax rate in Estonia was 26%; it was lowered to 24% in 2005 and to 23% in 2006. Currently (i.e. in 2010) income tax rate in Estonia is 21%.

social tax and unemployment insurance payments; dividends, on the other hand, are subject to income tax only. The direct marginal tax rate on labor income is two times higher than in case of dividends; payee' benefits associated with payroll taxes are largely independent of the amount of taxes paid and difficult to measure.

Basic statistical research shows that the average amount of emoluments paid to owner-managers for being the member of a management body is below the national monthly average salary, in 20% of cases it was even below subsistence level (ca 158 EUR a month in 2008). The analysis conducted by Estonian Tax and Customs Board showed that ca 5% of owners-managers probably use the partial or full replacement of salaries with dividends and that the use of such schemes is spreading. While the tax authority has allowed overlooking the legal form of the transaction if the form does not correspond to the substance of the transaction, it should first give clear guidance to the taxpayers how to determine adequate compensation for the managers.

The topic discussed can be developed in various directions. One suggestion for future research is to investigate negative effects of a partial or full replacement of wages and salaries with dividends from a personal point of view; largely this means compilation of a personal life-cycle financial planning model. Also it is interesting to compare the dynamics of remuneration of owner-managers vis-à-vis managers that do not hold stake in Estonia in recent years. Likewise empirical research on previously mentioned issue of using companies as piggy banks by their owners can yield interesting results.

**Acknowledgements:** This article was prepared with financial support received from the Estonian Ministry of Education and Research (Target Financing SF0180037s08) and the Estonian Science Foundation under Grant 6630.

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## TÖÖJÕU JA KAPITALI MAKSUSTAMISE ERINEVUSTEL PÕHINEVATE MAKSUDE PLANEERIMISE SKEEMIDE KASUTAMINE EESTIS

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### Sissejuhatus

Öeldakse, et maailmas pole midagi kindlat peale surma ja maksude, kuid tegelikult vastab tõele vaid selle väite esimene pool. Teadlik maksumaksja saab sageli ise otsustada kui palju, millal ja kus ta makse maksab. Maksuaspektidega arvestamine (sh ka maksude planeerimine) investeerimis-, finantseerimis- ja teiste majandusotsuste langetamisel on igati lubatud ja mitme seadusega kooskõlas oleva tegevusviisi vahel valides võib maksumaksja eelistada seda, millega kaasneb madalaim maksukoormus. Mõnikord püüavad maksumaksjad oma maksukoormust vähendada aga maksudest kõrvale hoides (näit. tulude varjamine, teeseldud tehingud jms). Selline tegevus pole mitte üksnes illegaalne vaid enamasti ka ebaeetiline ning ausat konkurentsikeskkonda kahjustav. Maksuseadused ei suuda kahjuks detailselt käsitleda igat võimalikku nüanssi majanduselus ning seetõttu eksisteerib mitmeid situatsioone, kus maksumaksja tegevus võib küll olla kooskõlas seaduse sätetega kui mitte seaduse mõttega.

Käesolevas artiklis käsitletaksegi üht sellist situatsiooni – nimelt töötasu/juhatuselise liikme tasu osalist või täielikku asendamist dividendidega. Autori arvates on tegemist teemaga, mis ulatub väljapoole rahandusteadust pakkudes diskussiooniainet nii ärireeetika kui ka ettevõtete ühiskondliku vastutuse valdkondade raames.

### Maksude planeerimise vormid ja põhiprintsiibid

Moodsa rahandusteooria nurgakiviks on väärtuse maksimeerimise printsiip. Iga juhtimisotsus peaks olema suunatud väärtuse kasvatamisele. Väärtuse määravad ära tulevikus tekkivad oodatavad rahavood – nende suurus, tekkemoment ja riskitase. Tavalist maksumaksjat huvitavad eelkõige maksudejärgsed rahavood ning seetõttu on ta valmis kulutama ajalisi ja rahalisi ressursse maksude planeerimisel tegevuseks. Efektiivne maksude planeerimine seisneb aga mitte maksude minimeerimises vaid maksudejärgsete rahavoogude väärtuse maksimeerimises. See tähendab, et arvesse tuleb võtta mitte üksnes tehinguga seotud maksuaspektid vaid ka kõik mittemaksulised näitajad, maksude planeerimisel tuleb arvestada kõigi tehingu osapooltega ning võimalike maksuriskidega.

Maksude planeerimise osas võib eristada kolme põhivormi: üht liiki tulu muutmine teist liiki tuluks (1); tulu ülekandmine ühelt isikult teisele (2) ning tulu ülekandmine ühelt ajahetkel teisele (3). Sageli maksustavad riigid erinevat liiki tulusid erinevalt. Nii on üpriski tüüpiline, et „aktiivset tulu“ (näit. palgatulu) maksustatakse kõrgemalt kui „passiivset tulu“ (näit. kasu vara võõrandamisest). Juhul kui need maksu erinevused on suured üritavad ratsionaalsed maksumaksjad muuta erinevate

tehingute ja instrumentidega kõrgemalt maksustatavad tulud madalamalt maksustatavaks tuludeks.

Sageli maksustavad riigid erineva juriidilise staatusega isikuid erinevalt. Kui need erinevused on piisavalt suured on see maksumaksjale ajendiks otsimaks võimalusi, et tulu teeniks eelkõige see leibkonna liige või kontserni kuuluv ettevõtte, kelle piirmaksumäär on madalaim. Siinjuures tasuks eristada riigisiseseid ja piiriüleseid võimalusi. Viimased on eelkõige aktuaalsed rahvusvaheliste ettevõtete maksude planeerimise alases tegevuses.

Raha ajaväärtuskontseptsiooni põhiselt saab väita, et mida kaugemasse tuleviku õnnestub maksumaksjal maksude tasumine lükata, seda väiksem on nende maksude tegelik mõju maksumaksjale. Mõnikord (näit. enne suurt maksutõusu) osutub aga just vastupidine käitumine majanduslikult kasulikuks.

Nii mõnedki maksude optimeerimise skeemid hõlmavad mitut ülalmainitud tegevust. Käesolevas artiklis uuritav töötasu asendamine dividendidega hõlmab samuti lisaks üht liiki tulu muutmisele teist liiki tuluks ka võimalikku maksukohustuse edasilükkamist. Nimelt toimub alates 2000. aastast Eestis ettevõtete kasumi jaotamine alles selle jaotamisel.

### **Tööjõu ja kapitali maksustamine Eestis**

Eestis, sarnaselt paljudes teistes riikides, maksustatakse kapitali madalamalt kui tööjõudu. Tulu kapitalist jaguneb jooksvaks tuluks (nt. intressid, dividendid, rendimaksud) ning kapitali kasvutuluks (kasu vara võõrandamiselt). Kõige nende tululiikide puhul (üksikute eranditega) on tulumaksumääraks 21%. Muud makse üldjuhul kapitaliga ei seonu (v.a. maamaks maaomandilt). 1990-ndate esimesest poolest alates on kapitali maksustamine muutunud üha soodsamaks. 1994. aasta tulumaksureformiga asendati progresseeruv maksusüsteem proportsionaalsega. 2000. aasta tulumaksureformiga lükati ettevõtete kasumi maksustamise moment selle teenimise hetkest edasi kasumi jaotamise hetkeni. 2005. aastal alandati tulumaksumäära 26%-lt 24%-ni, ning edasised maksualandused aastatel 2006-2008 tõid kaasa maksumäära alanemise 21%-ni. Samuti on Eesti viinud oma maksuseadustesse sisse mitmeid muudatusi elimineerimaks tulude (eelkõige dividenditulude) topeltmaksustamist ning sõlmitud on üle 40 topeltmaksustamise vältimise lepingu välisriikidega. Alates 2000. aastast ei maksuta Eesti üldreeglina enam mitteresidentide Eestis teenitud väärtpaberitulu.

Ka kompensatsioon tööjõu kasutamise eest võib esineda erinevates vormides, millest tüüpilisemateks on töötasu, erisoodustused ja juhatuse liikme tasu. Kui maailmas 1990-ndatel hoogustunud maksukonkurents on mobiilse kapitali maksukoormust tuntavalt alandanud, siis tööjõu maksustamise osas pole vähemalt Eestis sellist tendentsi võimalik täheldada. Kompensatsioon tööjõu kasutamise eest on üldreeglina maksustatud lisaks tulumaksule ka sotsiaalmaksuga (33% 2010. aastal) ning töötasu täiendavalt veel töötuskindlustusmaksuga (2010 aasta maksumäär töövõtjale 2,8% ja tööandjale 1,4%).

Otsustusprotsessis on tavaliselt olulised eelkõige piirmaksumäärad. Arvestades Eestis kehtivat maksuvaba miinimumi (ca 1726 EUR aastas) ning kehtivaid maksustamisreegleid on piirmaksumäärad tööjõu puhul ca kaks korda kõrgemad kui piirmaksumäärad kapitali puhul (vt. tabel 1).

**Tabel 1.** Otsesed piirmaksumäärad Eestis (2010. aastal)

Tululiik	Maksumaksja aastane tulu	
	< € 1726	> € 1726
Töötasu	27,7%	42,9%
Juhatuse liikme tasu	24,8%	40,6%
Erisoodustused	40,6%	40,6%
Dividendid	21,0%	21,0%
Intressi- ja rendimaksud	0,0%	21,0%

Kui 1990-ndate algul polnud tööjõu odavuse tõttu sellega kaasnevad kõrged maksumäärad Eesti ettevõtetele eriliseks probleemiks, siis tööjõu kiire kallinemine (ajavahemikus 1992-2008 kasvas keskmine palk ligikaudu 24 korda) on muutnud tööjõuga seonduva maksukoormuse üheks võtmeprobleemiks Eesti arenguteel.

#### **Töötasu asendamine dividendidega Eesti ettevõtetes**

Tööjõu kõrge maksukoormus ning võrreldes dividendidega kahekordne erinevus piirmaksumäärades on ajendanud Eesti ettevõtjaid otsima võimalusi töötasu asendamiseks madalamalt maksustatava tululiikidega. Kuigi efektiivseks maksude planeerimiseks tuleks arvestada ka mittemaksuliste aspektidega, on nende arvessevõtmine sageli raskendatud. Tööjõuga seotud maksude tasumine pakub töötajatele mitmesuguseid sotsiaaltagatise nagu näiteks ravikindlustus, riiklik vanaduspension ning töötuskindlustus, kuid nendega seotud hüvede suurus on vaid osaliselt seotud tasutud maksude suurusega (solidaarsusprintsiipt); need hüved on enamasti tingimuslikud ning osa neist realiseerub alles kauges tulevikus. Seetõttu on ka nende hüvede väärtust maksumaksja jaoks raske hinnata.

Asjaolu, et Eesti Äriseadustik võimaldab, kuid ei kohusta, ettevõtte juhatuse liikmetele tasu maksta, andiski ettevõtjatele võimaluse oma maksukoormust vähendada asendades juhatuse liikme tasu omanikutuluga (dividendid). Aastatega on nende ettevõtjate ring, kes sellist skeemi kasutavad üha laienenud (vt. tabel 2)

Eestis on ligikaudu 6000 juhatuse liiget, kellele pole alates 2005 aastast mingit tasu maksud ning ca 3000 pensionärist juhatuse liiget kelle ainuke ametlik sissetulek on riiklik vanaduspension.



**Tabel 2.** Juhatuse liikme tasu osaline või täielik asendamine dividendidega Eestis aastatel 2005-2009

	Aasta			
	2005	2006	2007	2008
Eeldatav aastane juhatuse liikme tasu (eurodes)	12 383	14 430	17 389	19 806
Juhatuse liikmete arv, kelle juhatuse liikme tasu on alla eeldatava ning dividenditulu üle € 6387	1924	2592	3974	4407
Juhatuse liikmete arv, kellele juhatuse liikme tasu ei maksta ning kelle dividenditulu on üle € 6387	106	156	211	251
Sotsiaalmaksu eeldatav alalaekumine seoses töötasu osalise või täieliku asendamisega dividendidega (miljonit eurot)	4,05	6,75	12,22	15,67

Maksukorralduse seadus (§ 84) lubab maksuhalduril vajaduse korral lähtuda tehingu majanduslikust sisust ignoreerides selle vormi. Ka käesolevas artiklis vaatluse all oleva maksude planeerimise skeemi puhul on seda seadusesätet kasutatud. Ringkonnakohtu seisukoht selles küsimuses oli, et dividende on küll võimalik maksuhalduril ümber kvalifitseerita töötasuks ja maksustada vastavalt, kuid üksnes juhul kui ettevõtte juhtimises osaleval omanikul on teada selged reeglid kuidas töötasu ja dividende eristada. Selliste reeglite väljatöötamise kohustus on hetkel pandud maksuhaldurile, kuigi palju mõistlikum oleks see küsimus lahendada seaduste tasandil.

### Järeldused

Eraisikute ja ettevõtete finantsjuhtimise probleemvaldkondade hulka kuulub maksude planeerimine. Maksude planeerimisega seotud tegevuste eesmärgiks ei ole siiski tasumiseks kuuluvate maksude minimeerimine, vaid maksujärgse tulu maksimeerimine. Samas kui eksisteerivad selgelt ebaseaduslikud maksudest kõrvalehoidmise meetodid, on olemas ka nn. hallid alad, kus piir maksude optimeerimise ja maksudest kõrvalehoidmise vahel on sageli hägune.

Käesolevas artiklis käsitletakse sellist skeemi, nagu töötasude asendamine dividendidega. Taoline skeem on populaarne eriti Eestis, kuna töötasu on maksustatav nii tulumaksu, sotsiaalmaksu kui ka töötuskindlustusmaksuga, samas kui dividendid on maksustatavad vaid tulumaksuga.

Algeline statistiline analüüs näitab, et Eestis 2008. aastal enamikes majandussektorites oli keskmine juhatuse liikme tasu madalam riigi keskmisest kuupalgast, ligikaudu 20% juhtudest olid juhatuse liikmete sissetulekud madalamad isegi vastava aasta elatusmiinimumi tasemest. Maksu- ja Tolliameti (MTA) poolt läbiviidud analüüsi kohaselt ligikaudu 5% firmaomanikest, kes täidavad juhatuse liikme kohustusi, kasutavad eeldatavasti töötasu osalist või täielikku asendamist dividendidega. Sellise skeemi tegelik ulatus võib autorite arvamuse kohaselt olla isegi märkimisväärssem.

Kuigi maksuhaldur lubab ignoreerida tehingu õigusliku vormi, kui vorm ei vasta tehingu sisule, tuleks tal kõigepealt anda selgeid suuniseid maksumaksjatele kuidas määrata piisav hüvitus juhtidele. Samas, nende suuniste iseloom on selgelt soovituslik ning Maksu- ja Tolliametil puuduvad volitused nõuda maksumaksjalt nende suuniste järgmist. Tundub, et muutust praeguses situatsioonis võib oodata vaid pärast vastavatesse õigusaktidesse muudatuste sisseviimist.

Käsitletavat teemat on võimalik arendada mitmeti. Üheks võimaluseks oleks selgitada töötasude asendamise dividendidega negatiivseid mõjusid erainvestori seisukohast. Samuti oleks huvitav selgitada omanik-juhtide ning ettevõttes osalust mitteomavate juhtide tasude erinevust ja selle dünaamikat viimastel aastatel. Huvitavaid tulemusi võiks anda empiiriline uurimus selle kohta, kuidas firma-omanikud kasutavad oma ettevõtteid rahaliste vahendite soodsama hoiustamise eesmärkidel.