
# Between confiscatory “Western” taxes and tax havens, is there a place to lay my hat?

# An introduction to the 4 Ws method

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“You, the people, have the **power** (...)

The power to create **happiness!** You, the people, have the power to make this **life free and beautiful**, **to make this life a wonderful adventure.**

**Let us fight to free the world**, **to do away with national barriers**, to do away with greed, with hate and intolerance. Let us fight for a world of **reason**, a world where **science** and **progress** will lead to all **men's happiness**."

*Charlie Chaplin, The Great Dictator, 1940.*

Adapted to the economic life of citizens, this commitment to put aside national barriers has resulted in various successes, including but not limited to: the European Economic Area (EEA)[1] and the North American Free Trade Agreement (NAFTA)[2], the World Trade Organization (WTO)[3], multi or bi-lateral trade agreements, the Comprehensive Economic and Trade Agreement (CETA)[4] and... the **Transatlantic Trade and Investment Partnership (TTIP)[5] which, if fruitful, will result in the biggest free trade deal in history.**

This is one more step on the long odyssey that began with the great explorers such as Marco Polo (c. 1254–1324), a contemporary of Ibn Battuta (1304–1369), who visited various parts of the Asian and African continents, including China, South Asia, the Horn of Africa and the Middle East, to name a few.

Ibn also visited parts of Eastern Europe. The earliest recorded activities of long-distance profit-seeking merchants in Europe (think of Vasco da Gama, c. 1460/1469–1524 or Christopher Columbus, 1451–1506) represented an important milestone in what would later be called the history of (Western) capitalism-mercantilism, along with the British East India Company[6] (1600) and the Dutch East India Company (1602)[7] which launched an era of large state-chartered trading companies.

For them, today's trade barriers, quotas and customs duties would have been fiercer enemies to confront and overrun than typhoons and giant ocean waves!

## Introduction

It has been a long journey for (tax) travelers avoiding the hazards of direct and indirect taxes, slippery social security contributions, and registration and successions duties before they finally reach their **(tax) haven or (tax) heaven**.

[1] http://ow.ly/P0bW305SEjw.
[2] http://ow.ly/2xf1305SEmM.
[3] http://ow.ly/G4O2305SEqe.
[4] http://ow.ly/VPfR305SEsh.
[5] http://ow.ly/hnb5305SEeL.
[6] http://ow.ly/LmjM3067kmr.
[7] The French East India Company will wait for the year of Our Lord 1664 to be set up (but will outrun the British equivalent in the 18th century).

Many were lost in the battle, crushed by the multiple and repeated military operations of the combined tax administrations – often gathered in regional or even international coalitions.

Most never even engaged in the confrontation, unarmed and unprepared for an unbalanced conflict between law-weaponized tax administrations, with prolific legislators watching their back, possessing the most potent deterrent armament of all times: **TAX KNOWLEDGE**.

Now let us leave this mad world of tax clashes, with greedy and suspicious officials preoccupied with their own wages and pensions, and come back to our **DREAM**.

When one dreams of a tax haven (if not a tax heaven), one considers changing one's domicile or seat of fortune. In the absence of being able to reach such a desirable state, one might feel doomed to suffocate in a burning hell of confiscatory taxes.

This short, brain-teasing – and hopefully enlightening – article basically aims to present a middle-way desirable position through **a 4-steps method: the 4 Ws**.

**How can one avoid the two extremes: illusory tax-free havens and enslaving, unjustly greedy Western states and their tax collectors?**

**Is there a place where I can lay my hat?**

If the answer is **YES**, then we may eventually do away with greed, hate and intolerance and build together a world of **reason** – a world where **science** and **knowledge** will lead to **happiness** for all of humanity.

Our dream – so wild that most taxpayers would never dare to believe it – might one day come to life: **I love paying my taxes**, as they are fair and represent <u>for me</u> a just return to the society and community I live in, help others, and nurture the future of our planet and its inhabitants.

## The 4 Ws Method

So, without any further ado, here are the **4 questions or 4 Ws**:

1. **Where (in the world) should I pay my taxes?**
2. **What Income Tax should I pay?**
3. **Which of the 4 types of taxable income for the individual income tax should I receive?**
4. **Who bears the costs/What are the deductible costs**?

Asking each of these **4 questions** reveals realms of tax opportunities to get us closer to the surprising goal of **loving to pay our taxes!**

Let us consider this original method as a repertory, an **entire range of skills and aptitudes** used in a particular field : **Tax (& Social Security) optimization**.

These **4 questions** will structure the approach of any taxpayer who may or may not have access to two, three or all four tax optimization opportunities, as maybe only one would be accessible or feasible. One question and its answer may already trigger substantial tax (and social security) savings but the model unleashes its potential and greatness when crossing and articulating the answers to **2 or more of the 4 questions or steps**.

The **4 Ws** may either be considered from **top to bottom (1 to 4)** – from the more abstract to the more concrete reality of the taxpayer – **or the other way round (4 to 1)**, taking off from the runway of professional costs and ascending to the open blue skies of international taxation.

In this article we have opted for a practical "**take-off**" approach (starting with Question 4, then – for ease of exposition – Question 3 followed by Question 2, before concluding with Question 1), as we consider a "catch-all" concrete example covering all four tax optimization opportunities.

## QUESTION 4 : Who bears the costs (the company or the individual)?

A similar question – "*What are the costs?*" – draws our attention to the key principle that taxpayers, whether legal entities or flesh-and-blood human beings, are only taxable on **NET** incomes.

The Belgian Income Tax Code (ITC – Article 6) states it clearly:

"The taxable income consists of the sum of all Net Incomes less deductible expenses.

The **Total Net Income** is equal to the **sum** of the following four net income categories:

1. income from **immovable** property;
2. income from **movable** capital and property;
3. **professional** income;
4. **miscellaneous** income."

There are **2 basic deductible expenses**:

1) Expenditure proven by **supporting documents**[8];
2) **Lump sums** or flat rates or fixed amounts based on legal provisions.

Within each category of income[9], different rules may apply concerning 1) what costs are deductible, and also 2) various standard amounts of deductible expenses that are applicable, and finally: 3) which other deductibles expenses, favorable tax regimes or tax cuts are granted.

Here are some figures unveiling the huge disparities in **lump-sum costs** per category of income:

1. 40% or 10% for income generated by **immovable property**[10];
2. 50% on the first bracket of EUR 15,360 for royalties[11], 15% on other incomes from renting or using **movable property** & no lump-sum costs for other incomes from movable capital and property;
3. 3% of the professional income of a **director** or 30% up to EUR 8,450 for an **employee**[12];
4. various rates for **miscellaneous income**[13].

Hence, initiating a **"cost-hunting expedition"** is practically a national sport in most (business) jurisdictions.

Interestingly enough, this cost-based race for humble net incomes will trigger different results within each of the **3 following Ws**:

1) As stated above, we should note that the answer to the 3rd question (**3. Which of the 4 types of taxable income for individual income tax should I receive?**) will impact the acceptable costs and any possible lump-sum amount of final taxes;
2) **Question 2 : What Income Tax should I pay?** also has strong ties with Question 4. Different Direct Income Tax regimes may accept or refuse the deductibility of the same cost or, on the contrary, apply the same rules to costs treated differently in other income taxes. A typical example is the quasi-absence of deductible costs for the Legal Entity Income Tax, as, in principle, the business profits or, say, the income generated by commercial activities, is not taxed. Another case would be the rejection of certain deductible expenses for non-

[8] Other cumulative conditions would typically be for professional income : a) incurred during the tax year; b) assisting the taxpayer in acquiring or maintaining taxable income; c) related to the professional activity of the taxpayer – See Article 49 ITC.
[9] See below concerning Question 3: Which of the 4 types of taxable income for individual income tax should I receive?
[10] Article 13 ITC.
[11] Then 25% on the bracket EUR 15,361 – EUR 30,780 and 15% above this ceiling, see articles 3 & 4 of the Royal Decree implementing the Belgian Income Tax Code.
[12] Then 11% between EUR 8,450 and EUR 19,960 and 3% above EUR 19,960 but capped at a maximum of EUR 4,240 of total deductible costs.
[13] See article 171 ITC.

resident taxpayers[14] or, on the contrary, additional and exclusive costs attributable to the non-resident or his/her employer/company.[15] Finally, costs may only be deductible for Corporate Income Tax and not for Individual Income Tax, or the other way round[16];

3) **The tax rates matter, but the taxable base is just as important and probably decisive**, as being taxed at 50% on 50% of one's income equals being taxed at 25% on 100%. Hence, progressive and marginal tax rates require attention, but no more than the rules that provide for the calculation of the net income: gross income minus deductible expenses. Thus, the answer to the **question "1. Where (in the world) should I pay my taxes?**" requires investigation into the deductible costs that will determine the final taxable base just as much as investigation into the rates that will apply to the final base.

## Question 3 : Which of the 4 types of taxable income at the individual income tax should I receive?

We have seen while answering the **4th question (Who bears the costs/What are the costs?**) that there are only 4 types of taxable income for individuals:

**1. income from immovable property;**
**2. income from movable capital and property;**
**3. professional income;**
**4. miscellaneous income.**

We have also seen that different rules may apply to each type of income when it comes to deducting costs or applying lump-sum amounts or rates to these deductible expenses. This is the first optimized quick gain already achieved when shifting from one category of income to another.

**What more is there on the shelf for us?**

You will remember that one must ask **3 questions (WWH) for each Direct Income Tax**:

1. **Who** is the taxpayer (who should pay this tax)?
2. **What** are the taxable situations or transactions (the elements of this category)?
3. **How** does one calculate the final tax due?

**Points 2 and 3 not only differ per type of Direct Income Tax (see question 2 below) but also per Category of income.**

[14] Based on the *summa divisio* (complicated by several Belgian-home-made decentralizations) as to whether or not they have a dwelling in the state of source besides the dwelling in their country of residence. Other (multiple) criteria apply since the last (tax) regionalization of 28 MAY 2014, e.g. whether the taxpayer receives at least 75% of his professional income from Belgian source. See articles 243 et seq. ITC for non-residents.

[15] Back to 1983, Belgium enjoys a special tax regime for expatriates set out in an Administrative Circular no. Ci.RH.624/325.294 dated August 8, 1983, http://ow.ly/L4uf304KUHz

[16] See articles 49 et seq ITC for the Individual Income Tax and articles 195 et seq for the Corporate Income Tax and for professional income only.

Here are a few useful hints that may guide the taxpayer on a prosperous tax-saving journey:

1. **Social security contributions only add to the taxation of professional income**. So, an easy social security optimization consists of shifting from professional income to, say, immovable income[17] or movable income [18] or miscellaneous income[19];
2. In principle, all four categories of income are added together and taxed globally, but **separate, distinct, lower rates usually apply to movable and miscellaneous income**;[20] In most countries, professional and immovable property income is taxed the most as being less "volatile" and easier to control and (legally) compel to be reported;

3. When one considers the taxable events, these also differ greatly per category of income. For example, simple appointment as a director, working usually on a daily basis for employees, invoicing for companies and self-employed, pension received from the state or private insurance, etc. are to be compared with the payment of dividends or interest relying on a corporate/contracting party's decision, capital gains on the sale of an underlying asset or security, sale or licensing of original works or patents, leasing, rental or sale of buildings or land, etc. **Hence, the power to control the taxable event triggering the final tax due differs greatly per category of income**;
4. Double Tax Treaties apply totally **different rules per category of income**[21], thus presenting new entry doors for *in situ*, tailor-made tax optimization;

5. **The four types of Direct Income Tax may also tax the four types of taxable income differently**. Legal Entity Income Tax does not tax business profits (or professional income, if you prefer) but only certain limited movable, miscellaneous and immovable types of income;
6. **Acceptable or deductible costs differ per category of income the same way as they differ per Direct Income Tax**.

[17] The classic situation is where the director of a company rents his real estate to the company in lieu of or in addition to receiving director's fees.

[18] While most shareholders of SMEs prefer dividends to directors' fees, the total tax burden for both the company (dividends are not tax deductible but part of the company's taxable profits) and the shareholder approximates that of directors' fees in a growing number of jurisdictions, including Belgium. The alternative consists of remaining in the Movable Income category but rather opting for royalties, which, in principle, are tax deductible in the hands of the company and are taxed favorably in the hands of the author (max. 15% up to EUR 57,590 in Belgium).

[19] The best optimization by far available in Belgium is not to distribute profits of companies but to sell their shares (0% taxation as long as remaining within the scope of the normal management of one's wealth) or to make a living from passive investments such as in real estate (0% if one waits 5 years for buildings and 8 years for land). The list of "miscellaneous" types of income is available in Article 90 of the Belgian Income Tax Code and their taxation rate is given in Article 171 of the Belgian Income Tax Code.

[20] Appropriately-named "movable" incomes are easily transferred between accounts or jurisdictions, thus enhancing a tax-shopping attitude among recipients of such income and corresponding attempts at tax seduction by different countries.

[21] See Question 1 above: Where (in the world) should I pay my taxes? Articles 6 to 21 determine, with regard to different classes of income, the respective rights to tax of the state of source or situs and the State of residence, and Article 22 does the same with regard to capital.

## QUESTION 2 : What Income Tax(es) should I pay?

There are **4 common types of Direct Income Taxes** applying to human activity:

1. **Individual** Income Tax;
2. **Corporate** Income Tax;
3. **Legal Entity** Income Tax;
4. **Non-Resident** Income Tax.

Each tax would usually be described in **3 steps (WWH)**:

1. **Who** is the taxpayer (who should pay this tax)?
2. **What** are the taxable situations or transactions (the elements of this category)?
3. **How** does one calculate the final tax due?

By first comparing the answers to questions 2 & 3 (tax base & calculation), one may proactively understand the pros and cons of becoming a taxpayer of each type of direct income tax.

The tax rates for Corporate Income Tax are usually lower than the rates for Individual Income Tax, and companies do not pay social security contributions on their revenues.
Non-resident Income Tax is usually similar to the Individual Income Tax of nationals. However, advantages may be granted to non-residents[22] or, on the contrary, not available to them.[23]

The benefits of (partially) leaving the Individual Income Tax regime to join the Corporate Income Tax regime by simply incorporating a company or buying shares are well-known, but one should also consider setting up or associating with a non-profit-seeking legal entity. This type of entity is subject to Legal Entity Income Tax, and this brings along new rules for determining the taxable base (and thus also the costs) and calculating the final tax. Setting-up a foreign, call it "off-shore" if you want legal entity, would only make it taxable in Belgium if it possesses a permanent establishment here.

The taxable base and the tax calculation will thus vary per Direct Income Tax and setting-up a foreign company (or buying its shares). We have become the modern Ibn Battuta or Vasco de Gama and explore new horizons, skies and fiscal (cooler) climates.

In most jurisdictions, numerous tax advantages favor those actors that assist the state in its common-good policies. In most jurisdictions, the total absence of taxation on surpluses generated by non-profit-seeking organizations creates a patent imbalance, compared with the harsh rates of the Individual and Corporate Income Tax on profits and remuneration earned by companies and human beings.

Are we saying that any commercial or industrial activity one can think of may be carried out via a not-for-profit organization?

Of course not! But there are many activities that could be handled by either profit-seeking or non-profit-seeking legal entities. Think of fair trade, retirement homes, day nurseries, sports clubs, media, …

**In a nutshell, let us remember that a total absence of commercial activities has never been required of non-profit-seeking entities. The major criterion distinguishing them from profit-seeking companies is that they do not enrich their members (as companies enrich their shareholders) and that they thus allocate most of their income to pursuing their socially beneficial goals.**

As these entities also have to pay for the services rendered or goods sold to them, actors in the non-profit sector may be remunerated for employment or director services, royalties for the sale or licensing of their original works, rent for leasing a registered office or seat of exploitation to the NPO, interest on loans granted, etc.

While non-profit organizations may not be sold (as the members do not own any rights on their capital or assets), members may own other assets that are valuable for the persons interested in pursuing the activities of the NPO. Think of the huge variety of original works,[24] patents[25] or trademarks[26] that may be connected with the activities of the non-profit sector.

Again, Direct Income Tax shopping will bring along different rules for each of the following Ws:

1) **Question 4 : Who bears the costs?** Direct Income Tax regimes vary in their determination of the taxable base (and thus the acceptable deductible costs) and the calculation of the final tax due;
2) **The answer to the 3rd question** (**Which of the 4 types of taxable income for individual income tax should I receive?**) will be determined by a careful analysis of how these types of income are taxed in each Direct Income Tax regime. If the Legal Entity Income Tax does not tax excess of income over expenses (the “net income” or “business profit”), then it compares rather favorably with the other 3 Direct Income Taxes[27];

[22] See, for instance, the special tax regime for expatriates known in Belgium since the circular dated August 8, 1983: http://www.law-right.com/the-special-tax-regime-for-foreign-executives/
[23] In Belgium, certain tax deductions are not applicable to non-residents who do not have a dwelling in the Kingdom.
[24] See the list drawn up by the Ministry of Economy: http://ow.ly/AZyq305SRSU.
[25] http://ow.ly/XguH305SSId.
[26] http://ow.ly/DW42305SSKs.
[27] See articles 180 à 182 et 220 ITC and the tax admitted commercial activities for non-profit seeking entities.

3) The answer to the question "**Where (in the world) should I pay my taxes?**" calls for a comparison of each possible Direct Income Tax available to the individual or corporate/legal entity taxpayer per jurisdiction.

## Question 1 : Where (in the world) should I pay my taxes?

### A (human) history of freedom

Human beings gather in large numbers and cooperate in many different, elaborate ways.

The whole economic and commercial history (and development of mankind) boils down to reducing trade barriers[28] and guaranteeing the four freedoms for the free movement of 1) capital, 2) goods, 3) services, and 4) the freedom of establishment of persons (and citizenship), including free movement of workers.

By opening one's mind to the legitimate right to cross borders, one experiences the four basic freedoms of an open society that values trade and exchange over barriers and closed communities.

Belgium has entered into **bilateral conventions for the avoidance of double taxation** (Double Tax Treaties or DTTs) with more than 100 countries.[29]

As most conventions are based on the OECD model,[30] the rules we will apply are totally international. Accordingly, in the 4 Ws process we will not initially distinguish between, for example, Belgium, France, Germany, Morocco, Singapore, the United Arab Emirates or the Republic of Congo.

We directly refer to either the Article of the convention or thecommentaries in full (http://ow.ly/Y41z305STTn) or condensed version (http://ow.ly/aNnR305SU0q).

### Model Tax Conventions on Income and on Capital

International juridical double taxation can be generally defined as the imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same subject matter and for

[28] The first recommendation of the OECD concerning double taxation dates back to February 25, 1955 (and was based on the work of the League of Nations starting in 1921). See: "Peut-on choisir où payer ses impôts en Europe ? La Commission Européenne vous répond" by Christophe Boeraeve, August 7, 2015, http://ow.ly/wHL7304FZNP and the most recent developments of the Transatlantic Trade and Investment Partnership (TTIP): http://ow.ly/AVnf304IdgA.

[29] http://ow.ly/jWF1304FZJI & http://ow.ly/q7v1304FZQC.

[30] http://www.oecd.org/tax/treaties/ - http://ow.ly/mhcC304G06W. & http://ow.ly/pDjv305SUBI. The success of the OECD model convention has extended far beyond the OECD area and inspired, for instance, the United Nations Model Double Taxation Convention between Developed and Developing Countries. Hence, the OECD commentaries are a widely-accepted guide to the interpretation and application of the provisions of bilateral tax conventions.


identical periods. Its harmful effects on the exchange of goods and services and movements of capital, technology and persons are so well known that it is scarcely necessary to stress the importance of removing the obstacles that double taxation presents to the development of economic relations between countries[31].

**Tax conventions on income and on capital** reduce or counteract the harmful effects of international juridical double taxation in two (or more) states. They make a key contribution to the development of nations and their various actors by fostering the exchange of goods, services, capital, technology and persons.
In an economy which is changing at a faster pace than ever before, let us all unite and benefit from the strengths and talents of the world's citizens to provide the solutions that we need – now and in the future.

## The four main types of Direct Income Taxes

What are our everyday lives made up of?
We engage on a daily basis in commercial, industrial, financial and work activities, and we share a private, more intimate life with our families, relatives and friends.

Hence, when one sets up (or joins in various ways) a company or legal entity in another jurisdiction, one unleashes the power and potential of optimizing the 4 taxes that usually impact human activity:[32]

1. **Individual** Income Tax; and/or
2. **Corporate** Income Tax; and/or
3. **Legal Entity** Income Tax; and/or
4. **Non-Resident** Income Tax.

It is only after the four questions of the 4 Ws method are answered that one needs to proceed to the national level of the jurisdictions chosen in the first question in order to particularize the other 3 Ws.

## Residency and source of income

Our global economy allows entrepreneurs to decide **WHERE** their company or not-for-profit organization will pay its taxes.

What is often overlooked by tax advisors and accountants is that setting up or joining a legal entity in one jurisdiction paves the road to other tax optimizations, i.e. at the Individual Income Tax/Non-

[31] OECD model convention with respect to taxes on income and on capital, condensed version, P. 7 : http://ow.ly/pDjv305SUBI.
[32] See **Question 2: What Income Tax should I pay?** and Article 1 of the Belgian Income Tax Code.

Resident Income Tax level[33] (Question 2); in relation to the acceptable costs (Question 4); and in the distinct determination of the taxable base and tax calculation of each category of income (Question 3).

So-called "**Split Salary**" optimization making full use of the two major criteria for allocating the right to tax at the international level (residency and source of income) is only possible when an individual or legal entity in one jurisdiction is interacting with another jurisdiction.

"**Residency**" in one of the two contracting parties (countries) is ONE of the TWO criteria for allocating the rights to tax, i.e. to the "**state of residence**".

The "**state of source**" will be allocated the rights to tax on different classes of income ("interest", "dividends", "royalties" but also salaries or "immovable property income") based on the "**source of the income**".

The rights to tax may be "**exclusive**" (the other contracting country is therefore prevented from taxing those items and double taxation is avoided) **or not** (thus allowing the state of source to withhold a **limited tax** on items such as dividends, interest, royalties, etc.)

**As exclusive rights to tax are, as a rule, conferred to the state of residence**, logically, for each type of income or capital, one faces three options (with the first being the least common and the third the most common):

1. Taxation without any limitations in the state of source or situs; or
2. Limited taxation in the state of source; or
3. No taxation in the state of source.

The forms of relief granted by a member state to avoid double taxation are listed in Articles 23A & 23B of the Model Convention (the Exemption[34] or Credit Method[35]).

When confronted with a violation by one state of these rules, one may initiate the establishment of a mutual agreement procedure for eliminating double taxation and resolving conflicts of interpretation of the Convention[36].

[33] Setting up a group of legal entities, profit-seeking and non-profit seeking, also triggers tax optimization opportunities at the national or international level.
[34] Income or capital that is taxable in the state of source or situs is exempted in the state of residence, but it may be taken into account in determining the rate of tax applicable to the taxpayer's remaining income or capital.
[35] Income or capital that is taxable in the state of source or situs is subject to tax in the state of residence, but the tax levied in the state of source or situs is credited against the tax levied by the state of residence on such income or capital.
[36] Article 25. This procedure bringing together the competent authorities, i.e. the tax administrations, of both countries is a deterrent for most local administrations, which rightly foresee an outlay of time and effort – and the use of the English language...

Time is running out for illegal tax avoiders, as the exchange of information between the tax authorities of the Contracting States and the assistance by Contracting States in the collection of each other's taxes is also part of the OECD Model Convention[37] who also face fiercely war declarations as the *EU Anti Tax Avoidance Package* (Tackling it!)[38].

## Practical use of DTTs

1. **Business profits** that are not attributable to a permanent establishment in the state of source are **only taxable in the state of residence of the company**.[39] Hence, a company incorporated in one country (the state of residence) cannot be taxed in the state of source unless it has a permanent establishment there[40];
2. **Real estate income and capital gains are always taxable in their country**, thus making taxation bases and calculations a key factor in immovable property investments.[41] This can also make it possible for indirect tax optimization by selling shares in a real estate company as opposed to the sale of its assets or the simple sale of a building or land (but recent OECD treaties provide for the taxation of the sale of shares deriving more than 50% of their value from such property[42]);

3. **Directors' fees** are always taxable in the **country of incorporation of the compa**ny paying them, thus offering the first, and often easiest, opportunity for a "salary split"[43] along with Article 15 of the OECD Model Convention relating to employees. A reference to the "183 days rule" of Article 15 is usually made for managing directors or general managers in charge of the day-to-day management (see item 4 below);

4. **Employment remuneration**, in principle, is taxed in the **country of residence** of the employee. If the work is carried out in the other contracting state, then the rights to tax shift to the state of source.[44] This is the first exception to the principle. If three conditions

[37] Articles 26 and 27.
[38] http://ow.ly/FsUu305SVDB.
[39] Paragraph 1 of Article 7: "Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State."
[40] Article 7 and paragraph 2 of Articles 13 and 22. The term "place of business" covers any premises, facilities or installations used for carrying on the business of the enterprise, whether or not they are used exclusively for that purpose. A place of business may also exist where no premises are available or required for carrying on the business of the enterprise and it simply has a certain amount of space at its disposal. It is immaterial whether the premises, facilities or installations are owned or rented by or are otherwise at the disposal of the enterprise. A place of business may thus be constituted by a pitch in a market-place, or by a certain permanently used area in a customs depot (e.g. for the storage of dutiable goods). Again, the place of business may be situated in the business facilities of another enterprise. This may be the case, for instance, where the foreign enterprise has at its constant disposal certain premises or a part thereof owned by the other enterprise.
[41] Article 6 and paragraph 1 of Articles 13 and 22.
[42] Paragraph 4 of Article 13.
[43] Article 16.
[44] Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

are simultaneously fulfilled,[45] then an exception to the first exception brings us back to the principle: taxation in the state of residence of the employee. The three conditions are cumulative, which means that if one or more are not satisfied, then the second exception does not apply. Hence, it suffices not to have to count the days of activity in the Work state[46], to have the remuneration of the employee paid by, or on behalf of a company in the Work state or borne by a permanent establishment of a company resident in the Work state to stay with the first exception: taxation in the Work state;

5. **Dividends and interest** are **taxed both in the state of residence and the state of source**, with limitations on the rights to tax in the state of source;[47]
6. **Royalties**, as a rule, are taxed in the **state of residence** of the author, but limited rights to tax, as with dividends and interest, may be allocated to the state of source;[48]
7. **Self-employed income is always taxed in the state of residence but may be taxed in the state of source if the self-employed individual has a fixed base in that country**. The same basic rules apply for the determination of a fixed base and a permanent establishment, and these have even been unified since 2000;[49]
8. Income from the activities of **entertainers** and **sportsmen** is always only taxable in the **state of source**[50];
9. Gains from the **alienation of shares or securities** are always taxed in the **state of residence**[51];
10. **Private sector pensions** are always taxed in the **state of residence**, and so is income received by students for the purpose of their education or training.[52]

One can easily envisage the numerous and cumulative tax opportunities that arise from simply combining these rights to tax based on clear, unified and practically universal OECD rules.

## Ms. Jolie & Mr. Pitch

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[45] 1) the recipient is present in the other state for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other state, and
3) the remuneration is not borne by a permanent establishment which the employer has in the other state.

[46] Although various formulas have been used by member countries to calculate the 183-day period, there is only one way which is consistent with the wording of this paragraph: the “days of physical presence” method. The application of this method is straightforward, as the individual is either present in a country or he is not. The presence could also relatively easily be documented by the taxpayer when evidence is required by the tax authorities. Under this method, the following days are included in the calculation: part of a day, day of arrival, day of departure and all other days spent inside the state of activity such as Saturdays and Sundays, national holidays, holidays before, during and after the activity, short breaks (training, strikes, lock-out, delays in supplies), days of sickness (unless they prevent the individual from leaving and he would have otherwise qualified for the exemption) and death or sickness in the family.

[47] Articles 10 and 11 with limits ranging from 5 to 15% for dividends to 10% for interest payments.

[48] Article 12.

[49] Before 2000, income from professional services and other activities of an independent nature was dealt under a separate article, i.e. Article 14. The provisions of that article were similar to those applicable to business profits, but it used the concept of fixed base rather than that of permanent establishment, since it had originally been thought that the latter concept should be reserved for commercial and industrial activities. The elimination of Article 14 in 2000 reflected the fact that there were no intended differences between the concepts of permanent establishment, as used in Article 7, and fixed base, as used in Article 14, or between how profits were computed and tax was calculated according to whether Article 7 or Article 14 applied. The elimination of Article 14 therefore meant that the definition of permanent establishment became applicable to what previously constituted a fixed base.

[50] Article 17.

[51] Paragraphs 4 and 5 of Article 13.

[52] Articles 18 and 20.

Let us consider a concrete example of a rather common situation allowing us to peruse the 4 levels of optimization.

Ms. Jolie owns a business in Brussels as a self-employed individual in the trade sector (she exports Belgian chocolates and imports services from Spain where she and her husband, Mr. Pitch, also have a dwelling). On the advice of her accountant, she considers setting up a company to shift from Corporate Income Tax to Individual Income Tax. A side benefit is that no social security contributions apply in respect of invoices issued by a company, unlike for invoices issued by private persons.[53] Mr. Pitch is a high level executive, manager of the MENA sales department, working in a Belgian company which is part of a U.S.-based international group of companies in the pharmaceutical sector. He has recently been offered the opportunity to be hired by (and to report to) the group's company in Spain, where the sales department is now based. Both Mr. Pitch and Ms. Jolie have plans to retire to Spain within 10 years, sell the shares of their company and enjoy a well-deserved pension. By then, their two children will either have found a job or will still be studying, with the world as their limit for choosing a position or university. Mr. Pitch and Ms. Jolie created original works during their professional activity which they licensed to their companies.

**Now the question is: why consider only Belgium as a place for incorporation?**

Asking this simple question opens a realm of tax optimization possibilities.

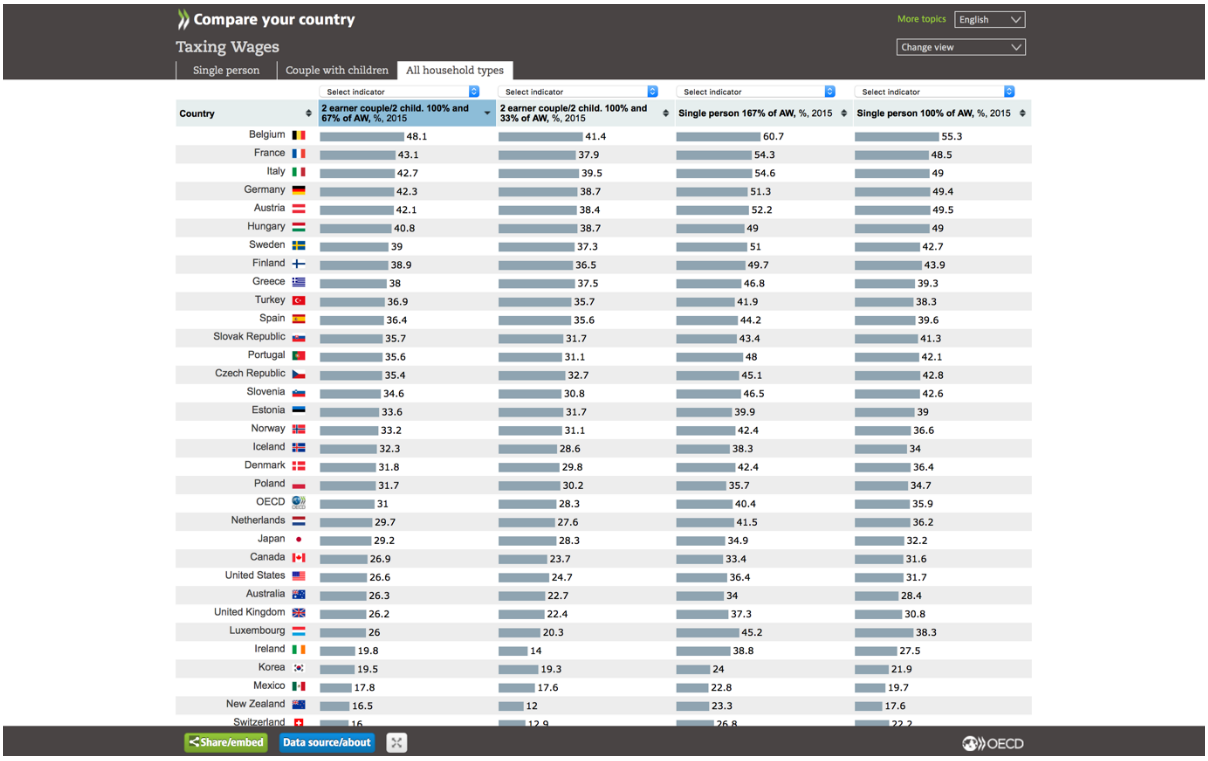
1. Carefully **comparing the taxable bases, rates and calculations** of the Corporate Income Tax in Spain & Belgium, Ms. Jolie opts for **setting up a company in Spain** (25% Corporate Income Tax compared to – still in 2016 – 34% in Belgium). This company will not be taxable in Belgium unless it has a permanent establishment there[54]. Ms. Jolie carefully avoids having either a material permanent establishment (an office, say) or a personal one (she does not habitually exercise, in a contracting state, authority to conclude contracts in the name of the company) in Belgium[55];
2. Ms. Jolie has been **appointed director** of the company and therefore **pays taxes (and social security) in Spain**.[56] The rate is again (much) more favorable than in Belgium:

[53] One should remember that social security contributions ONLY apply to professional income. See **Question 2**: **Which of the 4 types of taxable income for individual income tax should I receive?**

[54] Under Article 7, a Contracting State cannot tax the profits of an enterprise of the other Contracting State unless it carries on its business through a permanent establishment situated therein.

[55] She is aware that, while no formal legal right to use a particular place is required for that place to constitute a permanent establishment, the mere presence of an enterprise at a particular location does not necessarily mean that that location is at the disposal of that enterprise.

[56] Under Article 16, directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State. Ms. Jolie is neither remunerated for the day-to-day management or technical activities nor as an active partner in the company as specified in Article 16, paragraph 2 of the Belgium-Spain DTT, so we do not apply the exception of Article 15, paragraph 2. Even if that were the case, as the company is a Spanish company, the rights to tax directors' fees remains with Spain.




| Country | 2 earner couple/2 child. 100% and 67% of AW, %, 2015 | 2 earner couple/2 child. 100% and 33% of AW, %, 2015 | Single person 167% of AW, %, 2015 | Single person 100% of AW, %, 2015 |
|---|---|---|---|---|
| Belgium | 48.1 | 41.4 | 60.7 | 55.3 |
| France | 43.1 | 37.9 | 54.3 | 48.5 |
| Italy | 42.7 | 39.5 | 54.6 | 49 |
| Germany | 42.3 | 38.7 | 51.3 | 49.4 |
| Austria | 42.1 | 38.4 | 52.2 | 49.5 |
| Hungary | 40.8 | 38.7 | 49 | 49 |
| Sweden | 39 | 37.3 | 51 | 42.7 |
| Finland | 38.9 | 36.5 | 49.7 | 43.9 |
| Greece | 38 | 37.5 | 46.8 | 39.3 |
| Turkey | 36.9 | 35.7 | 41.9 | 38.3 |
| Spain | 36.4 | 35.6 | 44.2 | 39.6 |
| Slovak Republic | 35.7 | 31.7 | 43.4 | 41.3 |
| Portugal | 35.6 | 31.1 | 48 | 42.1 |
| Czech Republic | 35.4 | 32.7 | 45.1 | 42.8 |
| Slovenia | 34.6 | 30.8 | 46.5 | 42.6 |
| Estonia | 33.6 | 31.7 | 39.9 | 39 |
| Norway | 33.2 | 31.1 | 42.4 | 36.6 |
| Iceland | 32.3 | 28.6 | 38.3 | 34 |
| Denmark | 31.8 | 29.8 | 42.4 | 36.4 |
| Poland | 31.7 | 30.2 | 35.7 | 34.7 |
| OECD | 31 | 28.3 | 40.4 | 35.9 |
| Netherlands | 29.7 | 27.6 | 41.5 | 36.2 |
| Japan | 29.2 | 28.3 | 34.9 | 32.2 |
| Canada | 26.9 | 23.7 | 33.4 | 31.6 |
| United States | 26.6 | 24.7 | 36.4 | 31.7 |
| Australia | 26.3 | 22.7 | 34 | 28.4 |
| United Kingdom | 26.2 | 22.4 | 37.3 | 30.8 |
| Luxembourg | 26 | 20.3 | 45.2 | 38.3 |
| Ireland | 19.8 | 14 | 38.8 | 27.5 |
| Korea | 19.5 | 19.3 | 24 | 21.9 |
| Mexico | 17.8 | 17.6 | 22.8 | 19.7 |
| New Zealand | 16.5 | 12 | 23.3 | 17.6 |
| Switzerland | 16 | 12.9 | 26.8 | 22.2 |

Compare Belgium with neighboring countries like Luxembourg, the Netherlands or Switzerland, for instance… Or with the U.S[57].

Mr. Pitch also benefits from less-taxed wages in Spain[58] as he has now been hired as an employee of a sister company within the U.S.-owned group of companies.[59]

Thus, neither Ms. Jolie nor Mr. Pitch have to become tax residents of Spain to be taxed in that country, which has become the source of both directors' fees and employment income.

3. While enjoying a permanent home available to them in both states, they have not yet shifted their personal and economic relations (center of vital interests) to Spain and therefore realize a **tax-free capital gain on the sale of the Spanish company shares in Belgium**.

4. They agreed with the buyer of the shares that they will continue **licensing** certain original works (and trademarks) to the company after the sale, thus benefiting from a favorable tax regime in Spain and only 5% withholding tax in Belgium.[60]

[57] http://ow.ly/RbJ5305SyyI
[58] And much lower social security contributions.
[59] Article 15, paragraph 1: Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
[60] Article 12: Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State. Belgium is making use of Article 12, second paragraph to tax the royalties at 5%.

5. They do not own shares of companies in Belgium and do not receive interest from Belgian sources, so they do not need to apply the limitation of the withholding at source stated in Articles 10 (**Dividends**: max. 15% in the state of source) and 11 (**Interest**s: max. 10% in the state of source).

6. They now retire to Spain, which becomes their state of residence,[61] and pay their taxes on their pension there.[62]

7. The eldest of their children now works in other OECD countries or countries with which Spain or Belgium (whatever their state of residence is) has entered into a DTT and is therefore paying her taxes (and social security contributions) in the Work state.[63] Another is still studying and pays favorable taxes in Spain on the income he receives for his education (grants).[64]

8. They have previously sold their house in Belgium (while still tax residents there), and the right to tax the capital gain is exclusively allocated to Belgium[65]… which does not tax the **capital gain on the sale of a dwelling** by residents in the framework of the normal management of their wealth.

## The purpose of a country

At the end of the day, would the purpose of a country not be to constantly improving and optimizing the wealth of families? In which countries do households have the most disposable income?

How much do they spend on food or housing? Find out this and more in the National Accounts of OECD Countries.[66]

[61] Article 4: a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (center of vital interests).
[62] Article 18: Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
[63] Article 15: Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
[64] Article 20: Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.
[65] Article 6 and paragraph 1 of Articles 13 and 22.
[66] National Accounts of OECD Countries, Volume 2016 Issue 1: http://ow.ly/xvUc304Icbo.

Our businesses perspective, as entrepreneurs in a global economy, is that planning is an integral part of business and private activity and, as tax is a cost to the business, tax planning is a legitimate business activity and is not necessarily aggressive.

Legal solutions that are 100% compliant and make full use of the large range of Double Tax Treaties (DTTs) based on the OECD model are available in the vast majority of countries.

Companies and individuals may thus opt to be taxed in another jurisdiction and contribute to wealth creation and adding value to society in the tax-favorable climate they choose.

By opening up to the taxpayer the range of:

1) **international locations for residence AND source of income;**
2) **4 categories of income to receive;**
3) **4 types of Direct Income Tax to pay; and**
4) **numerous costs to deduct from the gross income**

one reduces the gap between the tax knowledge shared by international groups of companies and the tax administration, on the one hand, and the SME or individual taxpayer on the other hand.

## "One small step for... a taxpayer"?

To paraphrase Neil Armstrong, would that be: "*one small step for a taxpayer, one giant leap for mankind*"?

It is abnormal that **the vast majority of taxpayers**, especially from the working and middle classes as opposed to the richest individuals and the biggest companies, **do NOT love to pay their taxes.**

This may sound absurd – but should we not all be happy to contribute to our society and the fellow members of our community, citizens of our country and ultimately our region and the world?

If we feel dissatisfied paying taxes and resent the tax declaration as an unjust act of spoliation of too much of the value we create, what is the solution?

We hope that the goal we have set – to **democratize tax knowledge** as a means of bringing **science**, **reason** and **progress** to our professional and private lives – is at least partially achieved by referring to the **4 Ws method**.

This may be the shortest way to the desirable goal of loving to pay our taxes.

"You, the people, have the power – the power to create machines. The power to create happiness! You, the people, have the power to make this life free and beautiful, to make this life a wonderful adventure.

Then – in the name of democracy – let us use that power – let us all unite. Let us fight for a new world – a decent world that will give men a chance to work – that will give youth a future and old age a security.”

*Charlie Chapin, The Great Dictator, 1940.*

# THE END