



ETC: Excellent Tax&Corporation Management
Network of international attorneys and tax counsel

Gambling License -Popular Gambling License Jurisdictions

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We are an English tax and law office within the network of international tax consultants and lawyers (LowTax Network International), focussing, in particular, on "international tax planning for natural and legal persons". Other focal points are: the setting up of financial services companies and banks abroad, licences for games of chance within the EU and offshore, the setting up of trusts and foundations and, in addition, the transfer of domestic assets into trusts within the English-speaking legal area (asset protection, bankruptcy protection, inheritance law).

GAMBLING LICENCES – GAMBLING LAW

Addendum to the Subject of Real Estate Raffles- Raffling of Tangible Assets over the Internet



Gambling and Betting Licences: General Legal Principles

In many countries, gambling and/or online gambling is banned or the preserve of state bodies. In the field of gambling, the law of the country where the gambling company has its registered office applies, as a matter of principle, and the law of the other "state or states providing the service". Example: The gambling company has its registered office on the Isle of Man and the gambling service offered is also aimed at clients in Spain, Germany and Switzerland, for example. Consequently, the gambling law of the Isle of Man and the gambling law of Spain, Germany and Switzerland come into play.

However, there are possible solutions through the EU freedom of establishment and judgements of the European Court of Justice concerning the freedom of establishment or "Gambling Judgements" of the European Court of Justice: If a company within the European Union has a gambling licence, its services can be aimed at participants throughout the EU.

Thus, with a licence from Malta, the United Kingdom or Gibraltar gambling can be offered throughout the EU, as the national bans on gambling or gambling regulations would breach the EU freedom to provide services, if a licenced provider of the service were to be prohibited from offering a service in another EU member country (cf. European Court of Justice ruling of 09.09.2010 – C-316/07 inter alia). It must be borne in mind, in this connection, that Gibraltar does not belong to the VAT area of the EU.

Incidentally: The Isle of Man and Alderney are autonomous crown property and not members of the EU.

If what is involved is simply a "reseller service", Cyprus is an additional possibility, as offering such a service is feasible in Cyprus without a licence.

Moving to a non-member country such as Belize, the Isle of Man or Costa Rica is also possible.

It must be assumed, as a matter of principle that such an "offshore licence" only gives the right to execute the service within the country where the company has its registered office, such as in Belize, for example, but not in other countries and/or in the EU. However, this raises the question as to how other countries will wish to impose sanctions, as these countries, as a rule, do not have any agreement providing for mutual judicial assistance with other states.

Costa Rica adopts a special position: provided that the gambling service is only directed at clients outwith Costa Rica, no gambling licence is required, only a trading permit.

What preconditions are required to provide proof that the business premises of the gambling company are located in the country where it has its registered office ?

“The location of the senior management of the business” centrally defines the location of the business premises – also on the basis of Article 5 of the double taxation agreement: Either the client or an agent relocates his normal place of residence/abode to the country in which the gambling company has its registered office (that is, to Malta, for example) and appears himself as the director of the gambling company, or our partner legal office in the country where the company has its registered office appoints a trustee director or full-time director. In addition, having a purely “post-office box company” must be prevented. So simply having a “registered office” is, under any circumstances, not sufficient. However, offices do not always have to be large. Actually, within the EU, in most cases, having a virtual office (company sign, your own telephone number, the ability to take calls in person using the name of the company, a fax service) in a business centre is sufficient. Gibraltar is a special case: Due to domestic law, having a business set up and operated in a commercial way has been a requirement for some years now, that is, there must be at least one office and one full-time employee.

Gambling Licences and Tax-Law Aspects

What is also crucial within the context of a gambling company is the prevention of the approval of an illegal intermediate company. Due to the EU freedom of establishment and judgements of the European Court of Justice on the freedom of establishment, this problem can be solved relatively easily within the EU. Unlike when setting up companies in so-called offshore states (countries with low rates of taxation or with a zero tax rate and without a double taxation agreement with the country in which the registered office of the client is located, outside the EU): the approval of an illegal intermediate company can, actually, only be prevented by putting a business operation in place in the country in which the company has its registered office (that is, Belize, the Isle of Man and Costa Rica, for example) that has been set up in a commercial way and the senior management of the business can be proved to be operating from the country in which the company has its registered office, that is, there is a full-time director and not simply a nominee director. Of course, there are appropriate structural possibilities and/or approaches to solving problems.

Fiscal Structural Possibilities

First of all, a so-called gambling or betting tax is due in almost all countries. In addition, the profits of the gambling company are taxed. In Malta, there is the possibility of reducing the final tax rate imposed at company level through the Malta holding company model to 4.75%.

Taxation of Dividends

The profits after tax (dividends) are due to the shareholder/owner of the company. Most countries are familiar, in this connection, with a tax at source in the case of dividends flowing out of the country. Such a tax at source can, in principle, only be limited or cancelled through two measures:

- The country is not familiar with tax at source in the case of dividends flowing abroad (Example: Cyprus)

- An existing double taxation agreement (DTA) limits the tax at source

- The application of the EU parent company-subsidiary company directive: collection of the dividends free of tax at source in the case of affiliated companies within the EU

- The interposition of an EU holding company. Cyprus, in particular, is a possibility in this case: Application of the EU parent company-subsidiary company directive (provided that the subsidiary company/gambling company are located within the EU), Cyprus does not tax proceeds that are purely from holdings (holding privilege), and there is no tax at source in the case of the distribution of the dividends to non-Cypriots.

Apart from the tax at source, the dividends are taxed at the recipient of the dividends end in accordance with domestic law. In Germany, for example, at a withholding tax rate of 25%, and in many other countries according to the half-income system. If a double taxation agreement exists between the country of the recipient of the dividends and the country of the base company, and the possibility of using the credit method exists, tax paid at source can be deducted from the tax on dividends.

If, in the case of the dividend recipient, it involves a public limited company, then, in most cases, the dividends are collected tax-free. In addition, in the case of EU companies, the EU parent company-subsidiary company directive comes into play.

Gambling Licences and Services of Our Legal Office

Our legal office offers the entire range of essential services:

- setting-up of the company in the country where it is to have its registered office, that is, in Malta, for example

- on request, and insofar as it is required: appointment of a trustee director or full-time director in the country where the company is to have its registered office and/or a trustee shareholder

- proper place of business in the country where the company is to have its registered office (prevention of the approval of a "post-office box company")

- opening of a bank account in the name of the company, incl. online banking, cheques and a credit card. The client is given sole authority over the account, even in the case of solutions involving trustees, through a shareholders' resolution. The shareholders' resolution is held by the bank and can only be amended with 50+1 votes of the shareholders

- application for a permit (business plan, P&L plan, General Terms and Conditions, institution of licencing process up to and including obtaining the permit)
- insofar as required: co-operation with the "programmer of the gambling platform"
- tax structure e.g. setting-up of an intermediate holding company (dividend routing)
- securing of gambling licences in Malta, Gibraltar, England and also, on request, in so-called offshore states such as Belize, or a trading licence in Costa Rica

Gambling Licence in Malta

In the middle of 2003 the Maltese government amended its legislation in relation to online betting and games of chance to the effect that, from that point on, it became possible to obtain a licence to open up an online betting office or casino. This new type of legislation makes it very attractive for many firms to set up in Malta as the licence has some important safety features and it is possible, from now on, to promote online betting or casinos in the area of the EU and to offer these services as an operator or an agent (EU freedom of establishment, cf. also: Gambelli judgement). The licence is issued by the Lotteries und Gaming Authority. This authority is responsible for the control and regulations with regard to the operation of I-Gaming. The licence is issued for 5 years and can be extended thereafter.

Types of licences:

There are 4 different classes of licence. One or even more than one can be applied for.

- Class 1: traditional online games, such as casinos, bingos and lotteries
- Class 2: online games and betting
- Class 3: for operators offering the games and betting as a commission-based service, including fixed odds and gambling stakes (poker rooms, portals and affiliates and P2P)
- Class 4: for operators of I-Gaming platforms

Taxes in Malta:

Through the "Malta holding company model" a final tax rate of approx. 4.75% is achieved for the business premises. However, this assumes that a foreign public limited company is the majority owner.

Taxes on Gambling in Malta:

-Casino type games: approx. 4,600 euros for the first 6 months following the granting of the licence. From the 7th month and for the remaining period of the licence this comes to 6,900 euros per month.

-if the casino operates from a so-called "host platform" operiert (Class 4 Licence) the following applies: 1,500 euros per month for the casino operator, 0.00 euros in the first 6 months for the host platform, then for the following 6 months 2,300 euros per month and thereafter 4,600 euros per month for the remaining period of the licence

-in the case of betting, betting games: 0.5% of the "gross amounts" of the bets accepted and 0.5% in the case of so-called "pool betting" on "the aggregate of stakes paid".

-betting exchanges & poker operations: 5% of the "net income". This is to be equated with the "revenue from rake less bonus", commissions and payment processing fee; i.e. e-commerce fee.

Required Share Capital for a Gaming Limited Company in Malta:

- Class 1: €100,000 (one hundred thousand euros)

Class 1 – operators managing their own risk on repetitive games (casino-type games, games of skill and online lotteries) – own platform, at their own risk (casino, skill, online lottery)

- Class 2: €100,000

Class 2 – operators managing their own risk on events based on a matchbook (fixed odds betting, pool betting and spread betting) – own platform, at their own risk (betting syndicates)

- Class 3: €40,000 (forty thousand euros)

Class 3 - operators promoting and abetting gaming from Malta & taking a commission from promoting and/or abetting games (P2P, poker networks, betting exchange and game portals) – promotion or advertising of P2P, poker, betting or games in return for a commission

- Class 4: €40,000

Class 4 – operators hosting and managing online remote gaming operators, excluding the licensee himself (software vendors developing platforms from which gaming operators can operate). – operation of a platform, on which other games are offered

- Class 1 on 4: €100,000

Class 1 on class 4 - operators managing their own risk on repetitive games (casino-type games, games of skill and online lotteries) operating on a third party platform duly licensed by the Lotteries and Gaming Authority. – such as Class 1 (own game) but also on a licensed platform of a third party

- Class 3 on 4: €40,000

Class 3 on 4 - operators promoting and abetting gaming from Malta & taking a commission from promoting and/or abetting games (P2P, poker networks, betting exchange and game portals) operating on a third party platform duly licensed by the Lotteries and Gaming Authority.- Promotion or advertising of P2P, poker, betting or games in return for a commission (on an outside, licensed platform)

Gambling Licence in England

Within the context of the approval procedure there is a judicial hearing in London, at which the director of the limited company is present. The licence is valid for 3 years and can be correspondingly extended. The processing time is 3 -4 months.

In England, a distinction is made between an "organiser's licence" (he offers his own games of chance on the Internet) and an "agent's licence". In addition, there is a difference depending on whether the company wishes to provide gambling within Great Britain or only outside Great Britain ("Remote General Betting License").

The taxes on gambling are approx. 15%, with the taxes on the earnings of an English limited company rising progressively from 19-30% (19% up to a profit of 300,000 pounds sterling).

Government Fees/Fees

Application fee: one-off fee of 20,580 pounds sterling per licence application. Staff-management licence: 330 pounds sterling per person.

The annual licence fee depends on the gross turnover.

Let us assume, by way of an example, that the client comes under Class I, then the one-off fees as described would fall due, and an annual licence fee of 110,820 pounds sterling.

Taxation

The "gambling tax" can take the form of two "duties":

- 1) "Betting duty": the "betting duty" is due on every net amount staked taken in
- 2) "Remote Gaming Duty": the "Remote Gaming Duty" is due on the net proceeds from games of chance

This is 15% in both cases and is due on the net stakes or proceeds on a quarterly basis.

Gambling Licence in Gibraltar

For many of our clients Gibraltar possibly does not represent the best location as, due to domestic law, an operational business must be set up in a commercial way (a fully-equipped office) and the management must be carried predominantly from Gibraltar. This means, as a rule, that the client - or a representative/full-time employee - must relocate his normal residence to Gibraltar in order to carry out dealings from the country where the business is registered.

The gambling taxes in Gibraltar, in the case of an online casino and sports betting, is 1% up to a turnover of 42.5 million pounds sterling, however with a minimum of 85,000 pounds sterling per year being payable, up to a maximum of 425,000 pounds sterling per year. On top of this comes corporation tax.

An auditor must be appointed in Gibraltar. In addition, the applicant must prove that he has a fittingly positive reputation and is sufficiently creditworthy. The hurdles in the way of obtaining a licence are correspondingly high. Therefore, relatively few fresh licences are also granted.

All financial dealings must be conducted through a bank in Gibraltar.

Gambling Licence on the Isle of Man

The Isle of Man is not part of the EU. Consequently, the EU freedom of establishment and judgements of the European Court of Justice concerning the freedom of establishment and/or gambling judgements of the European Court of Justice are not applicable. In formal legal terms, the service may only be aimed at participants on the Isle of Man or at clients in countries that are not familiar with gambling regulations or do not recognize the regulations of the Isle of Man (however, none of us here knows of any countries).

Government Fees:

- 35,000 pounds sterling per annum
- one-off administration fee of 1000 pounds sterling which is non-refundable

The gambling tax is staggered as follows:

Total proceeds from gambling up to 20 million pounds sterling:	1.5%
Total proceeds from gambling from 20 to 40 million pounds sterling:	0.5%
Total proceeds from gambling from 40 million pounds sterling:	0.1%
Total proceeds from pool betting:	15%

Gambling in Costa Rica

Costa Rica adopts a special position. If the gambling service offered is directed at participants outwith Costa Rica, no licence is required, just a trading permit. No share capital is required - except for the share capital of the limited company (public limited company) in Costa Rica. Gambling taxes are likewise not levied in the case of offshore gambling services. Of course, even in the case of Costa Rica, it holds true that offering such a service will, as a rule, be illegal. However, Costa Rica does not have any agreement providing for mutual judicial assistance with other countries, with the result that requests to cease and desist do not pierce the corporate veil.

Gambling Licence in Belize

What is involved in the case of Belize is a typical "offshore country". Exempt companies (companies that only conduct business outside Belize) are not taxed. The routing fee payable to Belize for gambling is 0.75% of the gross annual takings.

Gambling in Other Countries

In addition to the countries described, our legal office secures gambling licences in: Antigua and Barbuda, Kahnawake and Panama.

What then is the safest legal structure if I would like to offer a gambling service worldwide - or in many countries?

Firstly, a gambling licence within the EU, as the entire EU is "covered" by it (see the statements above, EU freedom of establishment and judgements of the European Court of Justice concerning the freedom of establishment). Since Malta, in addition to England, has the strictest requirements, a licence in Malta would be prudent, as there is, of course, still a problem if the gambling service is also directed at participants outside the EU: the law of the country offering the service comes into play. Due to the strict demands of a licence in Malta, however, other countries would, as a rule "let it through", or a fresh licence would no longer involve extremely great expense based on a licence from Malta.

In that case, do "non-member country/offshore licences" or a Costa Rica trading licence make any sense at all?

Actually they do not, in formal legal terms since, - as has already been explained several times- the law of the country offering the service also comes into play in gambling law. Besides, the success of a gambling platform on the Internet very often also depends on factors such as:

- legal security for the player
- a secure hosting location
- trust in the service provider
- data security

etc.. Word quickly gets round in player groups that gambling service providers in specific countries may not be very trustworthy since the legal security and the necessary equity capital, among other things, are missing. However, we also look after clients who, for other reasons, prefer a licence in a non-member country or a trading licence from Costa Rica. As a tax and legal office, we do not evaluate such plans, but point out the legal facts. If a client engages us, for example, to secure a trading licence in Costa Rica, then we will also execute such a brief conscientiously. It is precisely with regard to Costa Rica or Belize that clients turn to us who are, themselves, resident in a non-member country and/or where the gambling service offered is aimed predominantly at participants in non-regulated countries.

On the subject of real-estate raffles- raffling of tangible assets over the Internet

In principle, the raffling of real estate/ raffling of tangible assets can be conducted over the Internet through a gambling licence. As an alternative, there is the possibility of achieving this through a limited company (EU company) in Cyprus. In Cyprus, this kind of activity is allowed without a licence. In addition, if EU circumstances are involved, the positive effect of the EU freedom of establishment and judgements of the European Court

of Justice and judgements of the European Court of Justice concerning the freedom of establishment come into play.

Legal procedure with regard to raffling real estate, using Cyprus as an example:

The limited company in Cyprus may dispose of its property by way of a lottery.

In order to include a property in the lottery that belongs to someone else the following construct may be described:

- The owner of the property concludes a brokerage agreement with the limited company.
- The owner of the property makes an offer for the sale of the property in front of a solicitor.
- The Cypriot limited company raffles off, as part of the package, agency services, the property and promissory note to the winner
- The winner receives the offer, which he accepts before a solicitor. The solicitor issues the apostille and sends this to the solicitor, before whom the offer was made. The first solicitor applies for the transfer and asks the winner to pay the purchase price. Thereupon the Cypriot limited company steps "in" and pays the purchase price from the promissory note. Thereafter, the solicitor will apply for an entry to be made in the land register (=transfer of ownership from the owner of the property to the winner).

That is really a lot of information, where do things go from here?

In order to propose a structure, we always require the following information:

-At which participants- and in which countries- is it intended to offer the gambling service?

-Does it involve a "reseller operation" (if "yes": In which country is the service provider licensed?), or "providing a service of your own"?

-If providing a service of your own: Who programs the gambling platform?

-Where are you subject -as a natural person - to unrestricted tax liability ?

-Where are the subsequent owners/shareholders of the gambling company subject to restricted or unrestricted tax liability ?



GAMBLING LICENCES AND BASIC CONSIDERATIONS FOR SERVICE PROVIDERS

Successful creation of a gambling service on the Internet: Why should you turn to our legal firm?

We are an international legal firm giving tax and legal advice and focus on international tax arrangements as well as international gambling law. Most of those offering a service on the Internet are either "local providers" and/or tax consultants or lawyers are not involved. Particularly in the case of purely local providers (e.g. the Isle of Man) there is the problem that although, admittedly, the legal and/or tax-law requirements in the country are known about, there is no international orientation. In this case there is the risk that those interested in/already providing games of chance on the internet will select structures that are illegal and/or fulfil the conditions involved in the abuse of arrangements from the point of view of tax law. In this case, making savings in the wrong place can have disastrous consequences, as relevant examples from the past impressively record. The services offered by our legal firm are:

- legal advice with regard to international gambling law
- selection of the right location for the gambling business
- advice relating to tax law (prevention of the abuse of arrangements, tax arrangements within the context of the associated companies, designing the company with an intermediate holding company, prevention of a high rate of tax being paid at source when distributing dividends etc.)
- application for a permit from the relevant authority up to and including the granting of the gambling licence
- setting up of the company in the relevant country and, on request, the appointment of a trust director or full-time director (a lawyer in the country where the company is to be domiciled), a proper registered office etc..
- opening of an account in the name of the company, linking up with payment services providers (settlement by means of credit cards, Paypal etc.)
- bookkeeping, advance VAT return, annual accounts, calculation of the gambling tax burden
- procurement of providers of gambling software

General Remarks on the Subject of Gambling Licences

Anyone tackling the subject of "the provision of gambling services on the Internet" will quickly discover that it involves an extremely complex legal subject. Many countries (see the chart below) regulate gambling through internal laws, and in other countries the provision of gambling services is prohibited, as a matter of principle, and, on the other hand, other countries know nothing at all about the regulation of gambling. Providers of gambling services are first of all faced with the question as to which country is suitable for offering internet gambling. In so doing, a series of legal questions and problems relating to tax law must be borne in mind. In addition, creating a gambling service only makes sense if those participating in the gambling are convinced of the seriousness of what is being offered. If what is being offered does not appear to be serious or the whole thing reeks of deception, participants will switch to another provider and, possibly, post negative reports in the relevant internet forums for online gambling. To that extent it

should be of huge interest to the provider of gambling services to choose as a location, as far as possible, a country which legally regulates gambling - that is, one where a gambling licence is required along with correspondingly strict conditions and demands.

Fundamental Legal Information

In simple terms, it can be stated that in the gambling sector the law of the country in which the company is domiciled applies (that is, the law of the country where the gambling licence is successfully achieved) and the law of the "state in which the service is being provided" (that is, the law of the country at which the gambling service is aimed). There is one advantage within the EU in this case: first of all the EU freedom of establishment and the decisions of the European Court concerning the freedom of establishment apply. Thus a company which has its headquarters within the EU and has a gambling licence at its disposal (e.g. Malta, England, Gibraltar) can direct the service that it provides to customers throughout the EU. However, there is, in many instances, a "conflict of law", with the result that internal laws (the state within the EU in which the service is being provided) cannot, admittedly, prevent or stop such a service being offered but almost declare participation in such gambling to be illegal. Nevertheless, it can be more than sensible to acquire a licence in the EU, provided that the gambling service on offer is also aimed at EU residents: the fundamentally positive effect of the EU freedom of establishment (providers of gambling services may advertise throughout the EU etc), the strict conditions within the EU (e.g. in Malta) and, along with this, documentation showing the seriousness of what is being offered. And the "trust of the participant" in the case of services being offered within the EU will, by their very nature, be higher than for "services provided offshore". If, on the other hand, the service offered is predominantly aimed at participants outside the EU, then other countries can also be extremely worthwhile considering. We also frequently look after clients who, for the reasons considered and outlined above, successfully achieve more than one licence, e.g. in Malta and on the Isle of Man.

Pure Reseller Services

If the client is planning to offer a purely reseller service (that is, becomes an affiliate partner of an existing gambling service provider **with a licence**), then the setting up of a limited company in Cyprus may also possibly be worth considering. In Cyprus (which is part of the EU) such reseller services are allowed without a licence. In many other countries there are special regulations (licences) relating to reseller services, e.g. in Malta.

Tax and Tax-Law Considerations

Individual countries recognise very different regimes with regard to the taxation of business premises and gambling profits (gambling tax). We go into corresponding detail with regard to these on our country pages or in the exposé. As a rule, the following taxes are payable in relation to gambling businesses:

- tax on the earnings of the gambling business (thus the profit of the operational facility is hereby taxed)
- gambling tax, that is, as a rule, the turnover from gambling is taxed
- POSSIBLY sales tax
- tax at source on dividends flowing abroad or domestic income tax

Irrespective of these, due to considerations with regard to tax law, a check must be carried out for any suspected abuse of arrangements. The key words here are: an illegal intermediate company, whose only purpose is to circumvent domestic taxation, national regulations governing the prevention of the abuse of arrangements and/or DTA clauses aimed at preventing abuse. Many countries are also familiar with so-called additional taxation where a native of a country has a controlling influence: if a native of a country (taxpayer) has a controlling influence on the foreign company (country of domicile of the gambling business), if this foreign company is set up in a low-tax country and only deferred income is realised, then the profit is taxed at the place of the owner of the shares, that is to say, through income tax and not through the normally reduced rate of tax in many countries when distributing dividends. Thus a structure can quickly become a tax trap, if national tax laws plus regulations within the EU and/or DTA law are not observed.

"Tax traps" can also lurk in direct holdings. Thus many countries are familiar with tax being paid at source on dividends flowing out of the country that is only restricted through existing double-taxation agreements and/or, within the EU, due to the effect of the EU parent-subsidiary company directive. In summary, it can be stated that the tax arrangements should be an essential element of the planning stages. At the same time, it must also be borne in mind that tax-law aspects and issues of the "applicable gambling law" frequently work together: if it is discovered that the business premises are not even located abroad, then domestic law (that of the country in which the client is domiciled) applies.

Important Points of Gambling Law and Tax Law: Business Premises Abroad

It must be able to be proved that the business premises of the company with the gambling licence are located abroad. Thus, for example, if it involves a Maltese limited company with a gambling licence, the business premises must be located in Malta. The definition of business premises according to the OECD_MA can be of assistance in this connection, as a rule 5 DTA (double-taxation agreement). Accordingly, important features are:

-the location of the senior management of the company: someone who is resident in the country where the company is domiciled (in our example, Malta) must occupy the position of senior manager of the company. Either the client or an agent shifts the focus of his life to the country in which the gambling company is domiciled or our partner legal firm in the country of domicile can appoint a trust director or full-time director. Care is required in the case of so-called nominee directors who subsequently withdraw and hand over to the actual beneficiary/client who is then entered as a director in the local register. Even if the relevant country does not have a register available for public inspection, the "actual location of the senior management of the business" is discernible as the nominee director is no longer actively engaged. In addition, the G20 agreements and/or clauses in the double-taxation agreements concerning the exchange of information must be borne in mind.

Besides, many gambling laws prescribe that two directors are required. One who is not a resident of the state in which the company is domiciled could thereby act as the second director of the gambling company, provided that the gambling law in question provides for such a possibility. Provided, in that case, that the first director attends to the vast majority of the management duties, and the second director travels to the country in which the company is domiciled now and again in order to be involved in building consensus, the business premises should, nevertheless, for tax-law purposes, be located in the country where the company is domiciled (e.g. Malta).

-a proper place of business: simply having a registered office does not count as having a proper place of business. The international authorities are familiar, in most cases, with

registered-office addresses in the countries as hundreds of companies frequently have their headquarters here. The minimum requirement would be to have at least a virtual office in a business centre in the country in which the gambling company is domiciled, that is, a company sign, its own telephone number, the taking of calls in person and a fax service. The ideal situation would be to rent an office or at least to book an office quota at the relevant business centre, e.g. the use of an office or conference room for 15 hours a month.

Tax Arrangements using an Intermediate Holding Company

An important tool for minimising tax can be the setting up of an intermediate holding company. The basic problem is that dividend distributions in many countries are subject to taxation at source, which can only be limited through a double-taxation agreement (DTA) or the effect of the EU parent-subsidiary company directive. An intermediate holding company (e.g. Cyprus, Holland, the UAE) collects the dividends of the subsidiary company (the gambling company) in the best case scenario free of tax at source and does not tax pure investment earnings. If this intermediate holding company is located in Cyprus, for example, then, as a matter of principle, Cyprus does not tax further distributions to non-Cypriots, irrespective of the existence of a double-taxation agreement (DTA) or not.

What costs must the client expect to pay?

First of all, a distinction must be made between the purely government fees payable to the relevant gambling authority (as a rule, we list these along with the descriptions relating to the relevant countries) and our legal fees for advice, applying for a permit, a business plan and a plan for the profit and loss account etc.. In addition, there are the fees for setting up the company in the relevant country plus, if applicable, a registered office and a head office, a trust director/trust directors and the opening of an account. The fees fluctuate very much, depending on the relevant country, the licence required and the arrangements for setting up the company.

Fundamental Questions for Our Customers

In order to be able to give you the right advice, we need, as a rule, the following information from you:

- the type of gambling (that is, for example, an online casino, betting, betting on sports)
- Are you providing the service yourself or are you simply the reseller of an existing service? If you are a reseller: Who is offering the service, and in which country does this provider have a licence?
- If you are providing a service of your own: Who is the programmer of the gambling software?
- At which customers, in which countries, is the service aimed?
- Where are you, as a natural person, subject to the payment of unlimited tax?
- Who are intended to become shareholders of the gambling company? (natural and/or legal persons), and in which country are these persons subject to the payment of limited or unlimited tax?)
- What is the budget that are you roughly planning for setting up the company, the gambling licence, advertising and marketing?

Fundamental Differences and Issues

Within the context of Internet gambling or betting offerings one must first differentiate if the client only acts as an "agent", i.e. as a reseller of existing web offerings or if the client wishes to realize its own platform/service. In the event a client wishes only to pursue "reseller activities", in this case the client could, for example, form a Cypriot Limited which offers such services. It is true that gambling is illegal in Cyprus, however, reseller offerings are legal. In the event the client wishes to offer its "own offering" the laws of the target countries must be considered. Of course the domestic laws of the respective seat state must also be taken into account. Within the EU the a license can be obtained in an EU state (for example Malta), and that said license must , under certain conditions, be recognized by the other EU states. The legal basis for this opportunity is the effect of the EU freedom of establishment and the judicial decisions of the European Court of Justice The situation can become legally problematic, if the offering is to be made available to customers in different countries, also outside of the European Union. If a license is realized in a EU state (for example in Malta), then one must consider that the only applicable law is the law of the seat country and that no permanent establishment exists, as defined by an applicable double taxation agreement. This could lead to the application of the target country's domestic law, which as a rule should be avoided., Consequently, at most only a representation may be installed "in other countries outside of the seat country" (no permanent establishment as defined by a an applicable double taxation agreement, only consulting activities). Based on different legal considerations we however are inclined to recommend against maintaining any connection to a target country, for example Germany or Austria (as a rule the seat country of the beneficiaries).

Popular Gambling License Jurisdictions

To operate an online casino, poker room or sports betting gaming site legally you will need to obtain a gambling license first. The actual gambling license to operate online gaming site is issued by many governments worldwide, but the most popular jurisdictions issuing such offshore gambling licenses are from the Caribbean and Pacific Island Governments such as Antigua and Barbuda, Costa Rica, St Kitts, Dominica, Curacau and Vanuatu. When selecting a gambling license jurisdiction, you should select one with a sensible approach to taxation, and license cost in combination with a strong licensing law and technical standards.

Why do you need the gambling license for your online casino, poker or sports betting site?

It is possible to make your online gaming business without a license, but most of major online casinos have license. Here are three main causes why it is worth to have a gambling license.

- In player's opinion gambling license guarantees reliability and straight dealing of the gaming company. Players have more confidence playing in casinos and poker rooms with license.
- In case of a settlement account opening banks insist on gambling license and especially while concluding agreements for receiving payments from bank cards.
- In many countries operating a gambling business without a gambling license is illegal and it may result in termination and criminal responsibilities.

GAMBLING LICENSE MALTA



Gambling License Malta- Remote Gaming in Malta

In the middle of 2003 the Maltese government amended its legislation with regard to online betting and games of chance to the effect that from then on it became possible to obtain a licence to open an online betting office or casino. This new type of legislation makes it very attractive for many firms to set up in business in Malta as the licence has high security features and

it is possible, from now on, to advertise online betting or casinos within the area of the EU and to offer one's services as an operator or agent (EU freedom of establishment). The licence is issued by the Lotteries und Gaming Authority. This authority is responsible for the monitoring and regulation of the e-gaming business. The licence is issued for 5 years and can be extended thereafter.

Applying for a Licence:

The following steps must be gone through and the following documents submitted:

- A business plan, including a profit & loss account plan for the first 2 years, a CV and a copy of the passports of all the directors.
A bank reference and a copy of any available licences.
The fully completed application forms.
- The setting up of an international trading company in Malta enjoying "foreign shareholder status".
- Engagement of a service provider for setting up the servers and internet service (the servers must be hosted in Malta).
- Presentation and inspection of all the games along with the relevant rules as well as the associated software. The accurate recording and description of all the software and games and how they work.

Advantages of Malta as a Location Compared To Other Countries

Malta is a member of the European Union. Consequently, the EU freedom of establishment comes into play with regard to the law on gambling, and the decisions of the European Court concerning the freedom of establishment. It is exactly on this basis that the possibility exists of a company domiciled in Malta that has a gambling licence being able to offer its services and advertise throughout the EU. However, in some instances, there is a legal clash with internal laws. The presentation of the legal consequences would go beyond the present paper. However, we will gladly advise our clients with effect to these.

Setting up a company operating out of Malta also has advantages for EU residents from the point of view of tax law: the effect of the EU parent-subsidiary company directive, the EU directive on mergers, the failure of national regulations with regard to additional taxation (e.g. the tax legislation in Germany which applies to non-residents, § 8 of the German Foreign Transactions Tax Act) to have any effect, and the effect of the EU freedom of establishment. In addition, Malta has a double-taxation agreement with almost all the important industrial countries, that is, the shielding effect of a DTA is available.

Within the EU, Gibraltar and England exist as alternatives. However, Gibraltar has high demands: a business operation must be established in Gibraltar in the normal business way. In addition, the authorities demand that people who are resident in Gibraltar be employed at the gambling company. England is actually a good location for providers of games of chance. On the downside there are the high costs compared to Malta and the high gambling and business taxes.

For purely reseller services (the client becomes an affiliate partner of existing companies with a gambling licence) Cyprus may also be suitable. Pure reseller services are allowed on Cyprus without a licence, that is, all that is required is to set up a company in Cyprus with business premises in Cyprus.

Gambling Licence in Malta and Possible Tax Arrangements

Internally (that is, in Malta) there is the possibility of setting up a holding company in Malta and a limited company in Malta. Provided that the holding company in Malta is under foreign ownership, there is a tax refund, with the result that the tax burden, at Maltese level, works out at 5% in the end. However, Malta is considering abolishing the tax privilege of holding companies. In this context - but also when designing a Maltese holding company - it is useful to set up an EU holding company as the owner/shareholder of the Maltese company. On the basis of the EU parent-subsidiary company directive the EU holding company collects the dividends from Malta tax-free and does not tax proceeds purely from holdings. In addition, an EU holding company can invoice the (Maltese) subsidiary company for carrying out holding duties, which correspondingly reduces the taxable income at the level of the (Maltese) subsidiary company. Cyprus or Holland are possibilities as locations for an EU holding company.

The following rules apply with regard to direct investments in the Maltese gambling company or holding company:

- Distribution to a natural person outwith Malta:

Tax paid at source in Malta in accordance with the double-taxation agreement, as a rule a tax rate at source of 15%. If there is no DTA, then tax is paid at source at the full rate for Malta.

- Distribution to a legal person outwith Malta:

Outside the EU: tax at source in Malta in accordance with the applicable DTA, as a rule tax a tax rate at source of 5%. Within the EU: effect of the EU parent-subsidiary company directive (that is, tax-free collection of dividends), provided that the preconditions of the EU parent-subsidiary company directive are met.

In order to prevent being charged a high rate of tax at source in Malta, it is useful, once again, to interpose an EU holding company. Cyprus offers advantages in this connection, as Cyprus does not, in principle, subject further distributions to non-Cypriots to any tax at source, irrespective of whether a double-taxation agreement exists or not.

Necessary Preconditions for a Gambling Licence in Malta

First of all, the business premises must be located in Malta. This assumes that a person who is resident in Malta will act as a director of the limited company in Malta. On request, we can appoint a lawyer in Malta as a trust director or full-time director. In addition, a proper place of business must exist in Malta, simply having a registered office or a "letter-box" does not count as having a proper place of business in this sense. Domiciliation is possible in this case at a business centre in Malta, with a company sign,

postal address and the forwarding of mail, one's own telephone number and the taking of calls in person using the company name, and a fax service. We will gladly assume responsibility for linking up with a suitable business centre. As outlined above, the gambling service must be hosted on a Maltese server. There are precise requirements in this connection with regard to the location of the server and the security of the server. The server locations must be kept under seal, and only the Gambling Authority of Malta or the director of the Maltese Limited company, accompanied by an official of the Gambling Authority, has access.

Gambling License Malta: The Malta Remote Gaming Regulations: Lotteries & Gaming Authority (LGA)

Over the past years Malta has successfully established itself as a serious and well-regulated European jurisdiction attracting on-line gaming companies. The Government of Malta carried out a complete revision and consolidation of the gaming legislation, and a new all-encompassing gaming law was enacted by the Maltese Parliament in virtue of which the Malta Lotteries and Gaming Authority (LGA) has been set up.

The Malta Lotteries and Gaming Authority has revised the regulations whereby Gaming activities including online casinos, casino-style games, online poker, betting exchanges and lotteries could be allowed after an application is submitted and a licence is granted.

Remote Gaming was originally introduced in Malta under the Department of the Public Lotto Act in 2000 which then only permitted licensing of Betting activities. The then Regulations for Offshore Betting Offices attracted more than 60 companies between 2000 and 2004, and during this period 42 companies operated successfully.

The Malta Remote Gaming Regulations came into force on the 20th April 2004. The new Regulations are established under the main Act as Other Games by Means of Distance Communication, this means that:

- the gaming principles are the same as those of the principal act that requires parliament intervention to change;
- the regulations are under the control of the Authority and can be changed by way of a simple legal notice.

New Regulations - New Concepts

- Technology Neutral – Apply to all types of technologies (internet, mobile, telephone, fax and game devices).
- Game Neutral – Apply to all types of games (Betting, P2P, Online Casino, Community Games, Leagues, etc..)
- Future Proof (as much as practicable).
- Shift from regulating games to regulating the means of carrying out gaming.
- Establishes a safe environment for players.
- Gives operators a competitive edge.

Key Official Requirement and Support

A Key Official would need to be appointed within 21 days from issue of the LOI.

Following find a list of responsibilities that need to be adhered to by the Companies' Key Official (KO):

- System review / Certification of compliance.
- Sealing of Servers and also responsible to make sure seals are not broken, and if so must be reported to the LGA and re-sealed.
- Incident reports - the LGA is to be advised in respect of any changes made to either the hardware or software of the company, by signing and submitting the Incident reports.
- Keeping the LGA updated in respect of any changes to be made, to the set-up approved by LGA.
- Submission of monthly gaming tax and annual gaming license fee.
- Submission of the Company's Accounts / Audit.
- Ensuring players' funds are adequately held by the Company at all times.
- Data Protection.
- NSO - National Statistics.
- KO is to have access to the back-end system.

Further, the Key Official together with the Management of the Company needs to ensure that the Company is operating in line with the following Malta regulations:

- Companies Act, 1995
- Data Protection Act, 2001
- Electronic Commerce Act, 2001
- Electronic Communications (Regulation) Act, 1997
- Income Tax Act, 1948
- Income Tax Management Act, 1994
- Lotteries and other games Act, 2001 as amended (Remote Gaming Regulations)
- Prevention of Money Laundering Act, 1994

The LGA has a staff compliment of over 40 personnel, all with the necessary background in the different areas of gaming. The officers directly involved in Remote Gaming are involved in the following functions: Application Processing, Involvement Verification, Regulatory Supervision, Financial & Accounting, Information Management, Legal & Enforcement, Inspections and Marketing.

Gambling License Malta: Classes of Remote Gaming Licences

Remote Gaming Regulations are based on a simple principle: Any concept using a means of electronic communication in which, one or more players pay to participate to win a prize, is licensable. The Remote Gaming Regulations categorises these concepts under four different types of Classes of Licenses:

Class 1 Remote Gaming Licence – applies for operators who offer games which are based on repetitive events and the gaming risk is managed by the operator. This type of license covers casino table style games, lotteries and slots. Since the licensee bears the full risk of the gaming activities conducted, the winnings are therefore guaranteed by it.

Class 1 on 4 Remote Gaming License - shall be an online gaming license for all types of games of chance and games of skill operating on an existing Class 4 licensee.

Class 2 Remote Gaming Licence – the license covers operators who manage risk based on a singular event using markets. This license covers the traditional fixed odds betting and some forms of pool betting.

Class 3 Remote Gaming Licence – this license is for operators who organise player to player games but they do not partake in the risk and receive only a commission. This license is suitable for betting exchange providers, pools and poker rooms.

Class 3 on 4 Remote Gaming Licence - shall be a licence to promote and abet gaming from Malta. For operators who promote or abet gaming from Malta on an existing Class 4 licensee.

Class 4 Remote Gaming Licence – this license is for software vendors who intend to host and manage remote gaming operators having any class of the above. They cannot partake in the gaming risk and can only receive a commission.

Once an application is submitted and the LGA find the application to be in order, a Malta Company is incorporated and a temporary gaming license is issued in the name of the Malta Company. This process should take 6 to 8 weeks. At this stage, applicant may commence their operations and would then have 6 months to obtain a certification of compliance, to then be issued with the official gaming license.

Gambling Licence in England

As England is a member of the European Union the EU freedom of establishment and the rules of the European Court of Justice concerning the freedom of establishment and the freedom to provide services within the EU apply. Consequently, a gambling company in England can offer its services throughout the EU.

The starting point is the setting up of an English limited company or PLC with business premises in England:

-location of the senior management in England: a person whose normal residence is in England must appear as a director of the company: either the client or an agent will transfer his normal residence to England or our legal office will appoint a trust director

-proper place of business in England: having a registered office does not count as a proper place of business, however offices do not need to be large.

-account on behalf of the company in England

As part of the approval procedure a court hearing will take place in London, at which the director of the limited company will be present. The licence is valid for 3 years and can be extended accordingly. The processing time is 3 -4 months.

The online service offered is consequently hosted on an English server, and the owner of the domain is the English company (a limited company or PLC). Our English legal office will assume responsibility for the measures which have to be taken, from the lodging of the application up to and including the licence, plus bookkeeping, VAT registration, the annual accounts and, if applicable, the settlement of wages, plus the assessments of the gambling taxes that must be paid ("Everything in one hand solution").

In England, a distinction is made between an "organiser's licence" (where the organiser offers his own games of chance on the internet) and an "agent's licence". In addition, there is a difference depending on whether the company intends to provide the gambling service in Great Britain or only outside Great Britain ("Remote General Betting Licence").

The taxes on gambling are approx. 15%, with the taxes on earnings of the English limited company or PLC rising progressively from 21-30% .

The documents required are inter alia a business plan and documentation attesting to the reliability of the management.

Government Charges/Fees

There are 3 types of charges. On the one hand, there is the application fee for each licence and, on the other, the licence for the staff/management.

These must be paid in advance or along with the application respectively. In addition, annual fees arise for the licensee as a third charge as well as 5-yearly processing fees for the staff licences. The licence fee falls due for payment 30 days after the licence has been issued.

Application fee : one-off payment of 20,580.00 pounds sterling per licence application.
Staff/ management licence: 330.00 pounds sterling per person.

The annual licence fee depends on the gross turnover:

- Category F - turnover up to 5 million pounds sterling
- Category G - turnover of 5-100 million pounds sterling
- Category H - turnover of 100 - 200 million pounds sterling
- Category I - turnover of 200 - 500 million pounds sterling
- Category J - turnover of over 500 million pounds sterling

If we assume, as an example, that the client falls into Category I, then the one-off fees as described would fall due for payment and an annual licence fee of 110,820.00 pounds sterling.

Regulatory Requirements

An audit must be carried out (using a UK firm of auditors), if an income of more than 1 million pounds sterling is achieved. In addition, an annual application for the inspection of the conditions is required.

Additional Requirements

If additional or other types of gambling such as bingo should be offered, then these are not covered by the licence and must be applied for and authorised separately.

In addition, there are certain conditions for keeping the licence that have to be fulfilled. Here are the most important of these:

- the gambling authority must be informed if the distribution of the stakes of the shareholders changes by more than 3%.
- the general terms and conditions and all the information relevant to gambling respectively must be listed on the website.
- there are various training standards /requirements in relation to employees
- requirements of the law on money-laundering

- the gambling authority must be informed whenever changes occur in the key management.

Taxation

The "gambling tax" can be represented as two "duties":

1) "Betting duty", the "tax on betting" falls due for payment on each net contribution taken in from betting – insofar as applicable-

2) "Remote gaming duty", the "tax on remote gambling", falls due for payment on the net profits from gambling - insofar as applicable

This is 15% in both cases.

Costs of Achieving a Gambling Licence in England

Our legal fees depend on the services. We will gladly send you a summary of charges.

Initial capital does not need to be raised. On top of this there are the government fees for registration with the English Gambling Commission.

There may be other fees on top of this, e.g. for the translation of the business plan into English. We can recommend an appropriate translator in this event.

Alternatives to a Gambling Licence in England

Malta, in particular, suggests itself as an alternative. Malta is also a member of the European Union and offers some advantages compared to England: lower corporation taxes, provided the Malta holding company model is followed, lower taxes on gambling, and the one-off and recurrent fees are also lower than in England.

GAMBLING LICENSE ISLE OF MAN

Isle of Man: General

- Surface area: 572 m²
- Languages: English, Manx
 - Currency: Pound Sterling (own bank notes)
- Inhabitants: 76,000
- Capital city: Douglas
- Inflation: 3 percent
- Unemployment: 1.6 percent

A jewel in the Irish Sea between Ireland and Great Britain, the Isle of Man is under the patronage of the British crown. In terms of foreign policy and defence the islanders rely on the British mainland just 100 kilometres away. Up until recent times, tourism and agriculture were the main source of income for the islanders. However, today more than 45,000 British companies in particular, generate 50 percent of the gross national product through their offshore activities. The government is thus placing strong focus on transforming the island into a financial centre.

By mid 2003 approx. 70 banks and financial companies and almost 200 insurance companies were established there. Bank deposits have grown in the past ten years by more than 400 percent to approx. 40 billion Euros. But the register of shipments in Douglas is also quite impressive. Tax exemptions, low costs and a one-time registration fee have attracted foreign ship-owners. Meanwhile, more than 200 ships with a tonnage of 5.2 million tonnes fly the Manx flag.

Tax advantages, membership of the Sterling monetary area and good connections with Great Britain are the driving force behind this development. The island belongs to the EU free-trade area and with the exception of foreign policy it is exempt from all aspects of the Rome treaties; it is entitled to determine and collect its own taxes.

- **Currency controls:** none
- **Fiscal extradition agreement:** none
- **Political risks:** none
- **Legal system:** Subject to British Common Law, company and tax law are regulated by the Company Acts of 1931 and 1974.
- **Patent protection:** Subject to British law
- **Residence:** For EU citizens no problem. One must provide evidence of approx. 50,000 pound cash income. The desired tax revenue is 10,000 pounds per annum. Each foreign national that purchases property on the island, must invest an additional 50 percent of the purchase price over ten years in government bonds that are not acceptable as collateral.
- **Taxes:** There is no property tax, inheritance tax, gift tax or capital gains tax for residents. Should tax at source be collected on the assets of residents outside the island, these can be credited against island taxes. Income tax for resident natural and legal persons is between 15 and 20 percent of net profits. Non Resident Companies pay a flat taxation of 750 pound on their profits. Corporate tax for trading companies has been reduced from 18 to ten percent.

Losses can be presented without time restrictions or transferred within a group and depreciable mobile assets can be written off immediately. A law on exempt companies has been in place since 1984. This provides additional incentives for companies, which only conduct offshore business, to trade or invest from the island. The Isle of Man does not levy taxes on property, capital, capital gains, gifts or inheritance. Likewise, there is no such thing as stamp tax. Value added tax is at a state imposed rate of 17.5 percent.

- **Double taxation agreements:** only for natural persons from Great Britain
- **Living costs:** same as Great Britain
- **Communication:** good
- **Travel:** Car: via Liverpool. In the summer there are other connections to ports on the British Isles. Flying: via London directly to the island airport Ronaldsway



**Isle of Man
Government**

Reiltys Ellan Vannin

Department of Home Affairs
Rheynn Cooishyn Shtie

ONLINE GAMBLING REGULATION ACT 2001

ONLINE GAMBLING LICENCE NO. 9

THE DEPARTMENT OF HOME AFFAIRS ("the Department") under the powers conferred upon it by section 4 of the Online Gambling Regulation Act 2001 hereby authorises -

Betting Fun Isle of Man Limited

("the licensee") whose registered office is at Burleigh Manor, Peel Road, Douglas, Isle of Man, IM1 5EP Isle of Man incorporated Company No 117492c.

- **Companies:** It is advisable to establish a Non Resident Limited Company that is taxed on a lump sum basis.

In recent years the island has grown to become one of the leading captive centres in the world. Highly attractive for insurance, with well in excess of 100 companies established there – paying an annual licence fee of 2,000 pounds and fully tax-free.

With further tax advantages the government is trying to coax existing non-resident companies currently trading

offshore to establish themselves on the island.

Trusts are a specific feature of the Isle of Man. These may be established by non-residents for the usufruct of non-residents. Where the income of the trust is earned outside the island, there is no taxation obligation on the Isle of Man. The Isle of Man was the first offshore centre to be afforded a special status – under the British financial services law. Thus approved investment companies and shares in mutual funds on the island can be sold in Great Britain. The annual fee income of the Trust manager is tax free.

Isle of Man Online Gambling Commission

The Isle of Man Government actively encourages the development of gambling and e-gaming business on the island. It remains committed to delivering a stable government and strong regulatory environment, supported by a wide range of attractive business benefits.

In 2001, the Isle of Man Government was one of the first jurisdictions in the world to introduce legislation specifically designed to benefit gambling and e-gaming firms and fully protect customers. Following further recent changes, the licensing and regulatory controls are now more responsive to the needs of the gambling and e-gaming industries.

The Isle of Man Gambling Supervision Commission was founded in 1962 and is fully independent and committed to player protection.

The Isle of Man Government and the private sector have worked hard to ensure that the island has a world class infrastructure and full range of support services in place for the gambling industry.

The Isle of Man Gambling Licensing Process

For more information on the range of commercial and business benefits which the Isle of Man can offer to your company, see the information provided by the Department of Trade & Industry.

The main objectives of The Isle of Man gambling commission are as follows:

- ensuring that gambling products promoted by operators in the Island can compete effectively throughout the world
- facilitating competition
- facilitating the provision of modern products and services
- ensuring that gambling is conducted in a fair and open way
- protecting children and other vulnerable persons from being harmed or exploited by gambling
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

The licensing application fee is £1,000. The annual license fee for a betting site is £35,000. There is a 1.5% tax on gross gaming yield up to £20,000,000. Yields over that amount are taxed at a reduced rate.

The corporation tax is 0%, provided the site does not accept bets from Isle of Man residents. As with land-based gaming, e-gaming regulations are reviewed and enforced by the Gambling Control Commissioners.

GAMBLING LICENSE BELIZE

Belize is a Central South American Country which borders the Caribbean Sea between Guatemala and Mexico. Formerly known as The British Honduras the official name was changed to Belize in 1973 with full independence granted within the Commonwealth on 21 September 1981, although this was not accepted by Guatemala until 1992 because of its historical disputes over the territory with the United Kingdom.

As with many former British colonies, Belize has adopted English law and its traditions and models for business formations, which take the form of: sole proprietor, partnerships, limited liability partnerships, Trust Funds, private companies, limited life companies, investment companies, Joint Venture and Cooperatives partnerships and International Business Companies (IBC).

Gambling Licence in Belize

The licence allows you to offer any type of gambling in accordance with the law of the offshore country. This includes the traditional casino offerings such as roulette, blackjack, baccara, poker, bingo, slot machines as well as all the other famous card games and dice games. Within the scope of the betting licence betting/lotteries can be offered in accordance with the statutory provisions of Belize.

The taxes on gambling amount to 0.75% of turnover.

We offer the complete range of the necessary services:

- Setting up of the company in Belize, a registered office, an account in Belize
- Application for a permit up to and including a licence (from the Gambling Authority in Belize)

Our legal fees depend on the services. We will gladly send you a summary of these. The total fees are calculated based on:

- the setting up of the company in Belize+government taxes in relation to the application for a licence+our legal fees.

Basic Problems

Belize is not part of the European Union. Consequently, the EU freedom of establishment and the decisions of the European Court of Justice are not applicable. Accordingly, offering the service to members of the EU would be against the law. The gambling service should actually only be aimed at people belonging to Belize or at members in states without any restrictive legislation since, in the field of gambling, it is the law of the country of domicile (in this case Belize) and the "country offering the service" that applies.

On the other hand, Belize does not have any agreement providing for mutual judicial assistance or any agreement covering tax matters with other states.

In addition to the legal problems concerning gambling, attention may possibly need to be paid to the tax-law aspects. Belize is a low-tax country which only has a double-taxation agreement (DTA) with Sweden, Denmark, Austria and countries of the Caribbean Community (CARICOM). Thus the key words may be: the assumption of an intermediate company, the sole purpose of which is to illegally circumvent the domestic law on

taxation, the reversal of the burden of proof and the effect of national laws aimed at additional taxation (that is, in Germany, the effect of §8/2 of the law to prevent international fiscal evasion). The assumption of the abuse of arrangements can only be prevented insofar as the senior management of the business can be proved to be located in Belize and the company runs a business operation that has been set up in a commercial way in Belize (with an office and employees). On the other hand, Belize does not have any agreements covering tax affairs (except with those countries that have a DTA with Belize) and it is possible to have a structure with bearer shares.

Alternatives to a Gambling Licence in Belize

A gambling licence in Malta (which is in the European Union), in particular, suggests itself as an alternative insofar as the gambling service offered is intended to be aimed at members of the European Union. However, the government and legal fees as well as the taxes on gambling are considerably higher.

GAMBLING LICENSE COSTA RICA

It is legal to conduct this businesses activity in Costa Rica and you only need:

- A Costa Rican corporation or company registered in Costa Rica.
- Registration with the tax authorities.
- A land use permit.
- A permit from Ministry of Health.
- A commercial license.

In practice, you do not require a license for Internet gambling, but you do require a commercial license.

Costa Rica has legislation to restrict land based gambling, but according to the legal system, those laws are not interpreted as extending to Internet gambling.

ETC will register the corporation and obtain the permits required from all governmental institutions.

Once this is done we obtain the Commercial License in the name of the corporation so the client is sure that his company will have no impediments to develop the intended objective.

To this end, most corporations registered in Costa Rica, obtain a license.

In order to create a corporation in Costa Rica that will allow for licensing, it must deal in network administration or internet administration. All internet addresses from Costa Rica must be blocked from the server, since it is Costa Rica's strict policy that none of their citizens participate in online gambling. One must also create an offshore merchant account to deal with the transactions.

The requirements to obtain this license are:

- Office lease contract.
- Health permit.

- Workers insurance policy.
- A Costa Rican registered corporation.

Due to the absence of legislation and oversight for online gambling, companies based in or registered through Costa Rica are not subject to monitoring or other regulations that many offshore companies are. This also means that since there isn't a body to govern gambling, companies are self-regulated and not required to pay betting or gambling tax.

Gambling License Antigua and Barbados

Requirements and fees to obtain an interactive gaming or interactive wagering IGIW licence on Antigua and Barbados

For obtaining an IGIW the following steps have to be undertaken:

Step 1 – Application for an Interactive Gaming or Interactive Wagering Licence must be completed and submitted.

Step 2 – (if applicable) a Business Entity Information Package must be completed and submitted.

Step 3 – Personal information has to be given by each key person of the company, including each shareholder of the company.

A fee of **\$15,000** US dollars is to be submitted for conducting investigations, due diligence and assessments of the applicant. This fee is non-refundable. If the cost and expenses of these investigations exceed \$15,000 US dollars, the applicant will be notified by the Commission and asked to submit a further non-refundable deposit, determined by the Commission.

The Commission may ask for further documentation.

Annual Deposit Requirements and fees for interactive Gaming and Wagering Licences (in US\$)

	First year	Following years
Due Diligence (non refundable)	15,000.00	
Interactive Gaming Licence Fee	100,000.00	100,000.00
Interactive Wagering Licence Fee	75,000.00	75,000.00
Annual Renewal fee for each Licence (non refundable)	5,000.00	5,000.00
Key Person Licence Fees	1,000.00	250.00

Reserve Requirement	100,000.00	
Monitoring System		
1 Licence	25,000.00	25,000.00
2 Licences	45,000.00	45,000.00

Reserve

Next to providing proof of capital adequacy, an applicant who has been granted a licence must submit an amount, or other similar security, of **100,000.00 US\$** to be paid into an account by the Commission. This fund acts as a form of security to ensure that licence holder's obligations to the players such as payment of prizes and the return of deposited money in accounts.

Depending on the risk, the Commission may increase the amount held as reserve.

IGIWR rules, that the prospective licensee must maintain a physical presence in Antigua and Barbuda. It must have its physical presence and the server, on which the transactions are conducted, in Antigua and Barbuda.

Gambling License Kahnawake

Where is Kahnawake?

Kahnawake is a community of approximately 8,000 Mohawk (North American Indian) persons located on the south shore of the St. Lawrence River, 20 minutes from Montréal, Canada. The Mohawk Territory of Kahnawake presently occupies approximately 20 square miles.

To see a map of the Mohawk Territory of Kahnawake, [click here](http://www.kahnawake.com/community/maps.asp):
<http://www.kahnawake.com/community/maps.asp>

To read an article entitled "Kahnawake" written by [Murray Marshall](#), the Commission's General Counsel, and published in the Fifth Edition of Internet Gambling Report, [click here](http://www.gamingcommission.ca/docs/ArticleKahnawake.pdf): <http://www.gamingcommission.ca/docs/ArticleKahnawake.pdf>

What is the source of the Commission's authority to license and regulate gaming?

The Mohawks of Kahnawake have consistently and historically asserted sovereignty and jurisdiction over their territory. They have never been defeated in battle and have never entered into a treaty with any government that waives or diminishes their sovereignty.

The Commission's authority to license and regulate gaming is a facet of the sovereign rights Kahnawake has as a community of indigenous peoples to govern its own affairs. In 2007, the Commission's authority was favourably considered in a [decision](#) rendered by the Superior Court of Québec.

To read an article entitled "A Compelling Case for the Mohawks of Kahnawake to Conduct, Facilitate and Regulate All Forms of Gaming on its Lands and for the Creation of

a Framework for Aboriginal Gaming in Canada” written by Morden C. Lazarus, [Lazarus Charbonneau](#).

How and when was the Kahnawake Gaming Commission established?

The Commission was established on June 10, 1996 pursuant to the provisions of the Kahnawake Gaming Law (MCR No. 26 / 1996-97).

The Commission has been continuously licensing and regulating online gaming since July 8, 1999 – the date on which the Commission enacted its Regulations concerning Interactive Gaming – longer than almost any other jurisdiction in the world.

The Commission is empowered to license and regulate gaming and gaming related activities conducted within and from the Mohawk Territory of Kahnawake in accordance with the highest principles of honesty and integrity.

Does the Commission have a relationship with any other regulatory bodies?

The Commission has always understood that, given the global nature of online gaming, it is imperative for regulatory bodies to cooperate with one another. Section 3 of the Commission’s Regulations specifically provide that they may serve as a basis for “harmonisation with comparable jurisdictions”.

In 2005, the Commission entered into a [Memorandum of Understanding](#) with the Financial Services Regulatory Commission of Antigua and Barbuda. In 2006, the Commission entered into a similar [Memorandum of Understanding](#) with the Lotteries and Gaming Authority of Malta. The Commission has frequent discussions with other regulatory bodies in many other jurisdictions.

How is the Commission structured?

The Commission is comprised of three members appointed for two year terms by the Commission’s governing body, the [Mohawk Council of Kahnawake](#). Presently, the Commission members are: Dean Montour (Chairperson), Melanie Mayo and Lori Jacobs.

The Commission fulfills its mandate using a combination of in-house personnel, Approved Agents and other professionals that are retained to provide specific advice and services. Click [here](#) for a diagram of the Commission’s operational structure.

What sort of online gaming activities does the Commission license and regulate?

The Commission licenses and regulates interactive gaming and terrestrial poker rooms that are located within the Mohawk Territory of Kahnawake.

Pursuant to its [Regulations concerning Interactive Gaming](#) (amended September 22, 2010), the Commission licenses and regulates various types of interactive gaming, including: casino, poker and sportsbook.

Pursuant to its [Regulations concerning Poker Rooms](#) (amended June 23, 2010), the Commission licenses and regulates territorial poker rooms that are located within the Mohawk Territory of Kahnawake.

How many Authorised Client Providers are presently licensed and regulated by the Commission?

As of January 15, 2010, there are 55 active CPA's, including Secondary CPA's, issued by the Commission.

ETC- Excellent Tax&Corporation Management: About us

We are an English tax and law office within the network of international tax consultants and lawyers (LowTax Network International), focussing, in particular, on **"international tax planning for natural and legal persons"**. Other focal points are: the setting up of financial services companies and banks abroad, licences for games of chance within the EU and offshore, the setting up of trusts and foundations and, in addition, the transfer of domestic assets into trusts within the English-speaking legal area (asset protection, bankruptcy protection, inheritance law).

In so doing, we look after clients from various countries. Our head office is in London. In addition, we have branch offices/representative offices and/or fee-based tax advisers and lawyers in many countries. The setting up of companies abroad is carried out by the lawyers' offices with whom we collaborate in the country where the foreign company will have its head office. Through this form of organisation clients are assured of the best possible advice in the various countries as well as the legally trouble-free setting up of the companies in the countries where the companies are to have their head office. Our work also includes, of course, the drawing up of expert tax appraisal reports within the context of the cross-border restructuring of companies.



Our work focusses on the following activities:

- **the setting up of companies abroad** : the setting up of companies within the EU (Bulgaria, Cyprus, England etc.) and other countries (e.g. United Arab Emirates, Singapore, the USA, Belize, Cayman Islands, Liechtenstein), incl. all the necessary services:
 - -setting up the company, recording it in the register of the county
 - -registered office, virtual office up to and including an office (proper registered office)
 - -if required: provision of a trust manager or salaried manager in the country where the company has its head office (5 DTAs: location of the senior management of the company as the location of the business premises for tax purposes). This task is only taken on, in our case, by lawyers or tax consultants within the country where the company has its head office.
 - -if required: provision of trust shareholders
 - -opening of an account in the name of the company, incl. credit card and online banking

- -bookkeeping, preliminary turnover tax return and annual accounts
- **Setting up holding companies** within the EU (Cyprus, the Netherlands, Spain, Denmark) and other countries for the purpose of collecting the dividends of the subsidiary companies as free of tax as possible, the non-taxation of purely holding revenues (holding privilege), the further distribution of the dividends as free of tax as possible to the actual owners of the shares (dividend routing). In addition: the setting up of management and administrative holding companies, including the choice of location and all the measures required for the purpose of tax recognition.
- **Cross-border restructuring of companies**, expert tax survey reports
- **Law on double-taxation agreements**
- **Europe PLC, company mergers, EU guidelines on mergers**

Tax advice for natural persons and entrepreneurs:

- Migration abroad, shifting of unlimited tax liability
- International inheritance tax and successor asset planning
- Assignment of employees

Turnover Tax Law- Customs Law:

- Cross-border facts and international optimisation of the organisation
- Repayment of turnover tax, international facts

Asset Protection- Inheritance Law- Business Succession:

Setting up of trusts and foundations in the English-speaking legal area (Belize, Jersey, Panama, Cyprus), transfer of domestic assets to foreign companies, trusts within the English-speaking legal area (family trusts, company trusts).

What we are NOT

We are "not just a setting up agency" that promises its clients quick and cheap solutions without risks. Offers from such types of setting up agencies which, as a rule, are not tax offices specialising in international tax law and, therefore, not "actually" allowed to give any tax and/or legal advice, are often extremely risky arrangements which quickly become a tax trap. The key words are: laws to prevent the misuse of arrangements within individual countries, clauses on the misuse of DTAs, G20 agreements, and information agreements with regard to tax affairs between countries.

Giving Advice to Clients in the Run-Up to Setting Up a Company/Tax Planning

Our office employs specialists in international tax law (tax advisers with specialist training in international tax law, lawyers, tax LL.M.s, and/or graduates in business management with additional training) and/or fee-based advisers with the same qualifications. For special tasks our office can fall back on tax advisers with special qualifications who work for a fee. Thus this involves, in the case of one partner, a lawyer with additional qualifications in international tax law and an LL.M. (in tax), who is working in the tax planning and strategy department of a major automobile group and is focussing on dealing with issues associated with tax-optimised financing, restructuring, holding activities as well as the European effects on direct taxation law. Thus, over the years, a network of highly specialised advisers has emerged which really

is comparable with the Greats in this sector, specifically in terms of quality. We are happy to give our clients advice over the telephone, by e-mail or in person at our premises.

Expert Tax Appraisal Reports

International tax law is a highly complex business. Therefore, within the context of tax optimisation plans/the cross-border restructuring of companies it is frequently necessary for highly specialised tax advisers / LL.M.s (in tax) to show possible routes to solutions and to point out their advantages and disadvantages prior to implementing them. This is carried out by means of a survey report/expert appraisal report. Domestic tax advisers cannot, as a rule, carry out such an expert appraisal in practice as they lack the relevant specialisation. Major international tax consultancy firms are frequently too expensive for the client. Due to the shape of our organisation we are in a position to carry out the relevant expert appraisal reports to an extremely high standard and on affordable terms. In so doing, we are very willing to collaborate with your domestic tax adviser.

Once the expert appraisal report has offered suitable routes to a solution the client decides, with our assistance, on the best possible route. At the same time, our office will, at the request of the client, not only to assume responsibility for giving tax advice but also for putting together the relevant constellation, that is the appropriate setting up of the company abroad.



“Setting Up of Financial Services Companies and Banks” Services within the EEA, the USA,Switzerland and Offshore (Belize,Cayman Islands)

Our “international banking law” department deals with the setting up of financial services companies/asset management companies and banks within the EEA (e.g. Germany,Spain,Luxemburg,Liechtenstein), Switzerland, the USA and offshore (e.g. Belize,Cayman Islands). Services offered as part of the setting up of banks are inter alia.:

- Incorporation of the company of the bank

- Application for admission to hold an A licence
- Setting up a place of business at the place of jurisdiction of your bank
- Recruitment of fit & proper personnel for the management of the bank according to international banking law
- Connection to a ratings agency (Rating, Basel II), e.g. Moodys, S&P
- Connection to the Society for Worldwide Interbank Financial Telecommunication (SWIFT, appointments at SWIFT), Swift Code and IBAN
- Connection to a deposit guarantee fund
- Banking law (general terms and conditions of the bank, credit agreements, due diligence, compliance, etc.)
- Representative offices or branches in other countries
- Tax planning and routing of dividends e.g. by setting up a holding company

International Games of Chance Licences Services:

- -advice on the choice of the country in which to have the head office
- -law on games of chance and betting
- -setting up of the company incl., on request, a proper registered office, trust director and/or shareholders, opening of an account
- -application for a permit (business plan, profit and loss account plan for the first three years, general terms and conditions etc) up to the granting of the licence
- -tax advice (tax planning, intermediate holding company for the routing of dividends)
- -arrangement of software programmers for the games of chance/betting platform of the online offer

Why form a company in a foreign country with a tax accountant specialized in international tax law?

The prospect will find numerous agencies specialized in foreign company formations in the internet. As a rule, however, these companies do not employ Tax Accountants specialized in international tax law. Frequently, such formation agencies are not – or only insufficiently - versed in international tax law, or are not permitted to provide advice on legal or tax matters in countries as a consequence of the Legal Advice Act. Formation agencies - or even Tax Accountants – located in the forming countries (for example: Cyprus, Belize etc...) often are only knowledgeable in domestic tax law. If one takes a look at the relevant internet offers, it quickly becomes apparent, that a great deal of the providers publish incorrect or insufficient information, working according to the strategy "The cheaper the better".

The following factors, among others, are to be observed within the scope of international tax planning / company formation in a foreign country:

-Most countries have laws for the prevention of tax evasion and/or have laws that formulate the right to impose taxes domestically. It is not in the interest of these countries, that companies and individuals have their income taxed in foreign countries, even though "in truth" the managerial supervision is located domestically and / or the activities are transacted / performed domestically and / or "in truth" the taxpayer resides in country and/or a production site is not installed in the foreign country. In many countries, (for example: USA and Germany) "tax evasion" is, in fact, a criminal offense. For this reason, it is somewhat naive to believe, that the right to impose taxes can be relocated to a foreign country, by simply investing a few hundred Euro for the formation of a company in a foreign country. It is true, that almost everything can be done, however domestic tax laws must be observed and – to the extent a production site is not installed in a foreign country, or no site for the exploitation of mineral resources or construction works, whose duration is greater than 9-12 months exist (in the event a

Double Taxation Agreement exists this will always constitute a permanent establishment), the impression must be avoided that the foreign company is just a „bogus company“.

- The permanent establishment in a foreign country:

1. Managerial supervision

A production site, a site for the exploitation of mineral resources or construction works, whose duration is greater than 9-12 months, always constitutes the establishment of a place of business in the formation country - at least in the event of a DBA-situation (Double Taxation Agreement). Otherwise the definition of a permanent establishment is based, among other things, on the "place of managerial supervision". As a rule, this means that a resident of the formation country (ordinary residence) acts as the Company Director. Either the client relocates his ordinary residence to the formation country and acts as the Director of the company himself OR a citizen of the formation country is hired to take the position of Director OR the client himself acts as the Director, and provides proof that he is present in the formation country to perform customary managerial supervision OR our Law Firm in the foreign country provides a Nominee Director.

In the event, a Nominee Director is provided the following factors must be observed:

-The responsibilities of the Nominee Director should be performed by an Attorney or Tax Consultant in the formation country of the company (in the case of a legal entity as a Trustee Director of a Law Firm). This ensures, that the trustee relationship is not disclosed for "incidental" grounds. Only attorneys can effectively protect the trustee relationship from third party access. It goes without saying, that attorneys will demand the corresponding fees and will not just demand a few Euros for their services as a Trustee Director.

Under certain conditions, it can even be required or useful, that a person in the formation country is employed as the Director of the company, i.e. with an employment contract between the company and the Director, payment of payroll taxes and social security contributions; to the extent they are collected. We are also able to provide such an "employed Director".

The so-called "Formation Directors" are "**absolute nonsense**", who resign after the company has been registered and transfer the company and position to the actual beneficiary. In this situation, the "actual Director" can quickly be identified. A Trustee Director must of course be registered and reachable during the entire agreement term.

One "can" deviate from such an arrangement, if the foreign company is formed in a country, which has not entered into a Double Taxation Agreement and / or a Mutual Legal Assistance (MLA) Agreement.

An "Offshore Director is also "**absolute nonsense**", an example of this is that a legal entity acts as the Director of an English Limited in Belize. Such a constellation is "asking for it" i.e. asking to be accused of "Avoidance Abuse" and of course, such a company will not be able to open an account or be issued a Value Added Tax ID Number.

2. The place of business in a foreign company

A "Post Office Box" or an "Answering Machine" does not constitute an ordinary place of business. Accordingly, "Registered Office Addresses" do not meet the prerequisites for a proper place of business.

The minimum requirements of a proper place of business are:

-Serviceable postal address, also for registered mail

-Reachable by telephone during normal office hours, personal call reception with the name of the company.

It does not always have to be "large offices", but it must not be a post office box. The configuration / structure of the place of business is to a high degree dependent upon the company activities. If one assumes that a company can only perform its business activities, if it has 3 offices and 4 employees on-site, then a pure virtual office would indeed appear rather odd. In this situation a "sense of proportion" is required, everything must be plausible.

3. The company account in a foreign country

Many formation agencies offer "help in opening an account". This means, in plain English, that an account is not opened, for example an English bank will not open an account, if the Director resides on Belize (unless he is present at the opening of the account, which is not probable). Also many banks will not open a company account, in the event only bearer shares are issued (with the exception that the owners are present at the opening of the account or in certain countries such as Switzerland or Belize. However, in these countries the owners must at least be disclosed to the bank and often must be present at the opening of an account.) "Just fill out a few forms" and the opening of an account is done, is, in most cases, nothing but a fairytale and has nothing to do with real-world business practices.

-Taxes must not be paid in tax-haven countries?

Also in this case, a great deal of nonsense is published in the internet. In reality, there are only very few "zero-tax havens", like for example the Cayman Islands. In fact, many countries (Belize, BVI, Nevis etc...) offer the formation of so-called offshore companies (as a rule International Business Companies, IBCs), i.e. companies who only transact business and generate revenues outside the country, however onshore companies (companies, who transact business domestically) are indeed taxed. Offshore companies must of course provide proof, that they only transact business outside of the country, and they must of course keep their books in order. In addition, there are a series of other taxes (withholding tax, capital gains tax, inheritance tax, property tax, income tax etc...) that may be of interest to our clients and may under certain circumstances be levied in "tax-haven countries".

- Are tax-haven countries always the most suitable countries for the formation of a company?

Certainly NOT. Tax-haven countries are defined as countries that have not entered into Double Taxation Agreements, Mutual Legal Assistance (MLA) Agreements, or extradition treaties for fiscal offences with other countries that at a minimum do not tax revenues that have been generated outside of the country.

The "screening effect" is not in effect against double taxation, specifically due to the lack of a Double Taxation Agreement. If a company, located in a tax-haven country is, for example, a stockholder of a company in Germany or the USA, in that event dividends distributed to such company in a tax-haven country are subject to the full withholding tax in Germany or the USA; while Double Taxation Agreements, as a rule, limit the withholding tax rate to 5%. Double Taxation Agreements also define under which circumstances the prerequisites for the existence of a permanent establishment are met and that a stock of goods or merchandise (warehouse), a permanent agent or a

representation in another contracting state as a rule do not constitute a permanent establishment. Should, for example, a company in Belize maintain a stock of goods or merchandise (warehouse) in another country, this warehouse as a rule does constitute a permanent establishment in the other country, i.e. taxation of the proceeds generated there.

Also the EU Parent Subsidiary Directive does not apply to tax-haven countries. This can have substantial disadvantages for associated companies; because in the case of the application of the EU Parent Subsidiary Directive the dividends distributed between the companies are tax-free (this fact of course is only advantageous to clients from EU states).

Companies in tax-haven countries do not receive Value Added Tax IDs. This could result in substantial disadvantages, if these companies want, for example, to transact business with European companies.

In addition, if one considers the fact that for example Cyprus (EU Member, Double Taxation Agreement with almost all countries) has an income tax of only 10% or the Canton of Zug in Switzerland has a total tax burden of 15.5% for companies or that the EU special economic zones (Maderia, Canary special economic zone) entice with income tax rates below 5%, one should ask oneself the question, if the formation of a company in a tax-haven country is really the correct alternative.

Factors, such as "economic and political stability", play also a major role. Example Belize: As long as the British military protects Belize against territorial claims of its neighbor Guatemala, investments can reasonably be made. If the protectors withdraw, one can assume the worst will happen. Should one decide to make an investment, one should take out an insurance policy against imminent domain.

Of course, good reasons may exist with regard to forming a company in a tax-haven country. Specifically the fact that Mutual Legal Assistance (MLA) Agreements, and extradition treaties for fiscal offences do not exist and that many tax-haven countries do not maintain a commercial register, can be very helpful in certain constellations.

And of course there are also clients, who setup an "actual company" in tax-haven countries, with offices, employees and an employed Managing Director who maintains his ordinary residence in the foreign country. In such cases, of course, the situation is to be assessed differently.

- Tax Planning within the scope of "associated companies"

Within the scope of associated companies, it is of extraordinary importance, if the EU Parent Subsidiary Directive is applicable and / or if a Double Taxation Agreement has been entered into and / or if the respective country levies withholding tax on outgoing distributed dividends. This - and other details - must be considered in international tax planning.

-Tax Planning within the scope of Holding companies

Numerous details must also be observed in the formation of a foreign holding:

- Location of the subsidiaries (DBA-Situation, EU, Non-DBA Situation?)
- Advantages and disadvantages of individual holding locations, with regard to the high priority objectives
- How are non-holding-activities taxed in the seat country of the Holding?

- Does a holding privilege even exist (for example Cyprus, Switzerland, Spain), i.e. no taxation on the distribution of incoming dividends (for example, Cyprus, Switzerland, Spain, the Netherlands) or low taxation?
- How are outflows /dividend distributions of the Holding taxed, if they are distributed out-of-country or distributed in-country (withholding tax)?
- How are interest and license payments of the Holding taxed?
- How are deductions due to losses from sale and write-downs to the lower going concern value addressed?
- How are deductions of expenditures for interests / stockholder debt financing addressed?

Conclusion

International tax planning is a very complex subject and belongs in the hands of trained specialists. "Just forming a company on the fly for a few hundred Euros" can have fatal consequences for the client. Good advice costs good money. And a waterproof company constellation, which would stand up to subsequent verification - is simply not feasible for a small amount of money.

Offshore Company Formation: Tax haven rankings

1. EU member countries

Advantages: The recognition of a permanent establishment in the foreign country, from the point of view of EU member states, does not require establishment of a commercial business operation (see also EU Freedom of Establishment); also, applicability of the EU Parent-Subsidiary Directive (tax free receipt of foreign dividends, e.g., in the case of a German capital investment firm) and general existence of DTAs.

- **Taxes in Europe database:**

The "Taxes in Europe" database is the European Commission's on-line information tool covering the main taxes in force in the EU Member States ([IP/07/662](#)). Access is free for all users. The system contains information on around 650 taxes, as provided to the European Commission by the national authorities.

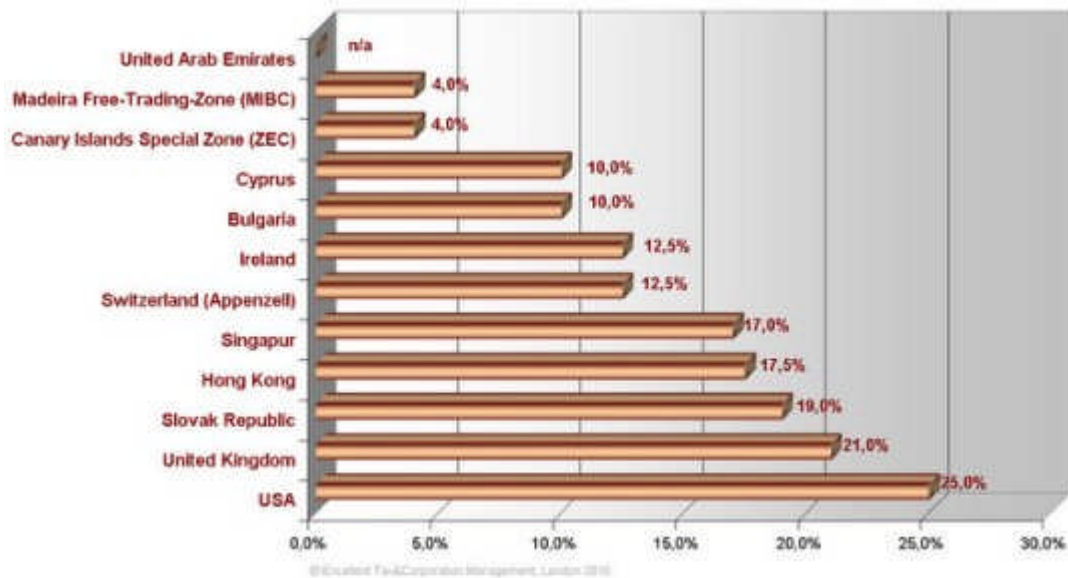
1.1. **Cyprus:** 10% income tax, regardless of profit. Profit distribution is not taxed in the case of foreign shareholders. Holding companies are tax exempt.

- EU Freedom of Establishment Yes
- DTA: Yes, with most countries
- EU Parent-Subsidiary Directive applicable: Yes
- Holding company privileges: Yes
- Banking secrecy: High
- Nominee relationships allowed: Yes

Advantage: EU Freedom of Establishment as well as DTA, very low taxes compared to the rest of Europe, dividend payouts to non-Cypriots are tax exempt (otherwise subject to 15% defense tax). Holding companies are completely tax exempt.

1.2. **Bulgaria** (10% income tax rate, independent of profits, no taxation of distribution of profits, EU company: EU freedom of establishment applicable, therefore EU directive on parent companies and their subsidiaries, DTA concept)

CORPORATE TAXATION AT IMPORTANT LOCATIONS

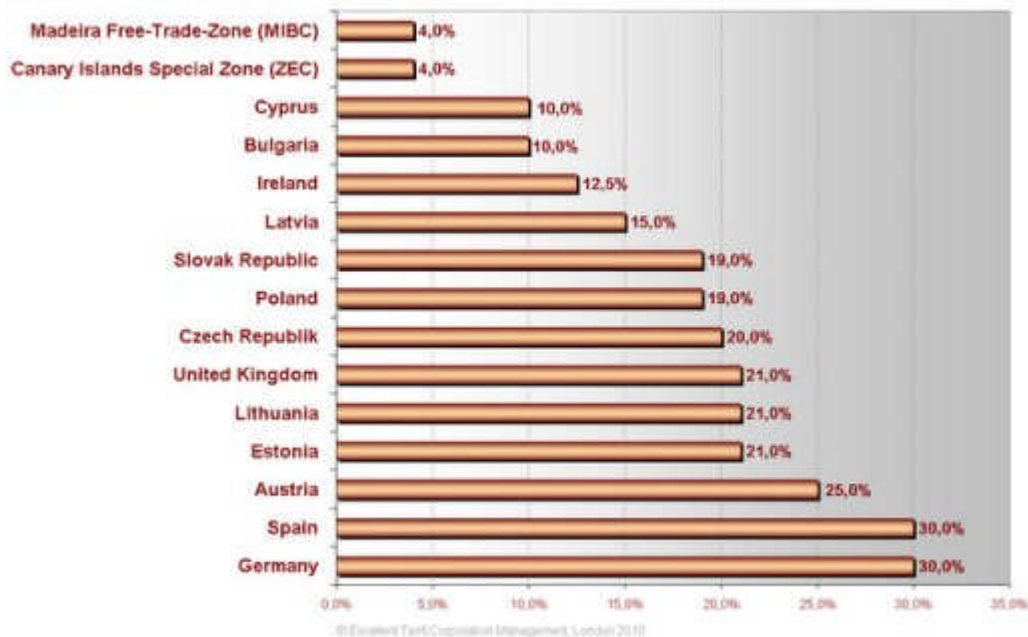


UAE: No taxes, exempt on oil companies, petro-chemical industries and banks.

Switzerland: By Kanton. Average tax level is 21%. Singapore: No taxation on first \$ 100,00.00; 8,5% taxes on \$ 100,001.00 to \$ 300,000.00; Thereafter a Flat Rate of 17%. Exempt companies and foreign income is tax free.

USA: Taxation depends also on state law. Federal Corporate Income Tax is 15% on net earnings up to US\$ 50,000.00. Taxation thereafter rises progressively to a maximum level of 35%.

CORPORATE TAXATION IN THE EU



Canary Islands Special Zone: Does not belong to EU VAT territory. Special requirements as providing new jobs and investment have to be met. United Kingdom: 21% taxation on mid-sized business up to £ 300,000.00 net earnings. Taxation thereafter rises progressively to a maximum level of 30%. Germany: Total taxation burden is set by Corporate Tax (15%) and local Business Tax. Madeira Free-Trade-Zone: Special requirements as providing new jobs and investment have to be met. Switzerland: Taxation is ruled by the Kanton. Total taxation burden is set by Federal Tax plus Kanton-Tax and local tax. Total taxation burden alternates between 12,5% and 28%.

1.3. **England:** 21% for small to medium-sized companies (up to GBP 300,000 in profit), thereafter gradual increase up to 30% VAT registration required only upon reaching GBP 60,000 (approximately EUR 100,000). Very liberal attitude toward offshore companies, maintains a DTA with the Isle of Man.

- EU Freedom of Establishment Yes
- DTA: Yes, with most countries
- EU Parent-Subsidiary Directive applicable: Yes
- Holding company privileges: No
- Banking secrecy: High
- Nominee relationships allowed: Yes

Advantage: EU Freedom of Establishment; also DTA, low tax rates for small to medium-sized companies compared to the rest of Europe

1.3.1 Setting up a UK Ltd with an offshore company, UK Ltd as agent only: Up to 90% profit transfer before taxes allowed

A maximum of 90% of UK profits BEFORE taxes in the UK may be transferred to an offshore country as long as the UK Ltd acts only as an "agent" (profit transfer and domination agreement between the offshore and UK Ltd).

1.4. Ireland

- EU Freedom of Establishment Yes
- DTA: Yes, with most countries
- EU Parent-Subsidiary Directive applicable: Yes
- Holding company privileges: Depending on type of formation
- Banking secrecy: High
- Nominee relationships allowed: No

Ireland has a corporate tax rate of 12.5%. Disadvantages include a high income tax rate of 20-60% for natural persons and the fact that nominee relationships are either prohibited or practically impossible. Suitable for "actual company relocation."

1.5. Portugal/Madeira

Short summary of advantages:

- **EU membership**, EU Freedom of Establishment and EU Parent-Subsidiary Directive applicable
- Portugal/Madeira belong to the **VAT Zone** (the Canary Islands and Canary Island Special Zone (ZEC), for example, do NOT); no import sales tax on the import of goods into the EU, 6th EU Directive applicable

Taxes:

- Type I: **Completely tax exempt**
- Type II: **Tax rates of 4 % until 2012 and 5 % until 2020 guaranteed**

Tax exemption or reduced taxation are subject to requirements such as creation of jobs and establishment of a commercial business operation. Our office in Madeira is equipped to meet the necessary requirements (normally only suitable for actual corporate relocation or establishment of an actual business in Madeira.) However, even in the case of no actual business establishment, our partners can help you meet the requirements for tax exemption or reduction. This requires the contractual employment of local citizens in the company (at EUR 400/month) and the leasing of an office. Monthly costs apply in this case.

2. Non-EU, but with DTA

From the point of view of most countries, the recognition of a permanent establishment requires establishment of a commercial business operation in the country of residence.

The financial authorities in your home country may require proof of residency from the

foreign country's financial authority. If no commercial business operation is established, the domiciling of the company via a Business Center (www.regus.com) with 10 hours of monthly office space use is usually sufficient. The nominee General Manager may act as a permanent employee, in which case his compensation must be "regular."

2.1. **Switzerland:** Tax rates vary by canton, as the total tax liability equals the federal tax (8.5%) plus the cantonal tax. An income tax rate of 15.5% is achievable (in Zug). Special conditions: Tax payments are considered business expenses, which correspondingly reduces tax liability as of the second year.

- EU Freedom of Establishment No
- DTA: Yes
- EU Parent-Subsidiary Directive: Switzerland has subscribed to the EU Parent-Subsidiary Directive; bilateral recognition agreements are in place
- Banking secrecy: Very high
- Nominee relationships allowed: Yes
- Bearer stock: YES

Advantages: Low tax liability, easy access to cash, banking secrecy.

Special terms regarding branch offices of EU foreign companies: These are treated as Swiss corporations without the initial CHF 20,000 capital stock investment requirement; commercially established business operation not required. Tax liability under domicile privileges only 8.5%.

2.2. **Dubai/UAE** ZERO taxation, except for oil companies, chemical companies and banks.

- Low tax country as per the German Foreign Transactions Act (AStG): Yes
- Applicability of Section 8 of the AStG (CFC taxation in the case of dominant influence by a German national): YES
- EU Freedom of Establishment No
- DTA: Yes
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: Very high
- Nominee relationships allowed: Yes

Advantages: No taxes. If adequately structured, so-called "white income" (i.e., tax free income in Germany) may be divertible to Germany.

Disadvantage: Very high capital stock required in comparison to other legal structures, high formation and licensing fees, at least 51% of the shares of the company must be held by local citizens except in Free Trade Zones, nominee solution is an option. The "Dubai Offshore Company" allows for the establishment of a legal corporate structure without capital stock.

2.2.1: **UAE, Exempted Companies**

- EU Freedom of Establishment No
- DTA: Yes, with most countries
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: High
- Nominee relationships allowed: Yes

Advantages: No taxes. If adequately structured, so-called "white income" (i.e., tax free) can be channeled outside the country.

2.3. Singapore

- EU Freedom of Establishment No
- DTA: Yes, with almost all countries
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: Extremely good
- Nominee relationships allowed: Yes

Singapore is known, not inaccurately, as the "new Switzerland." Foreign income is not taxed. Domestic income is taxed at 18%; the first 200,000 Singapore dollars are tax-free.

2.4. **USA:** Tax liability depends on the individual state and the "object of taxation." An income tax rate of 15% is achievable. Normal tax rate: 30%.

- EU Freedom of Establishment No
- DTA: Yes, with almost all countries
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: Average
- Nominee relationships allowed: Yes
- Bearer stock allowed: No, but shareholders are not entered in the commercial register

Advantage: The "Inc" is the pure form of incorporation, and is a good structure for capitalization, no capital stock investment required, generally low costs in comparison to other corporate structures, one-person formation possible. Shareholders are not listed in the commercial register. **Most US states have no sales tax.**

3. Non-DTA countries (offshore):

- EU Freedom of Establishment No
- DTA: No
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: Very high
- Nominee relationships allowed: Yes
- Public commercial register: generally none
- Bearer stock allowed: Yes, bearer stock is allowed in most offshore countries In general, no nominee shareholder is required.
- Taxes: In most countries, Exempted Companies (those that only generate income outside the country of residence) are not subject to taxes. Isle of Man

imposes a flat tax of GBP 450. Liechtenstein offers no tax exemption, depending on corporate structure and sales

--Sales taxes: Typical offshore countries (Seychelles, Mauritius, Hong Kong, British Virgin Islands (BVI), Bahamas, Nevis, Dominica, St. Vincent, Belize) have no sales tax.

Countries include:

- **Asia & Pacific:** Seychelles, Mauritius, Hong Kong
- British Virgin Islands (BVI), Bahamas, Nevis, Dominica, St. Vincent, Isle of Man
- **Latin America:** Panama, Belize

- **Liechtenstein (AG, GmbH, Trust, Anstalt [institution], Stiftung [charitable foundation])**
- **Isle of Man:** GBP 450 annual flat tax for foreign income. Is a member of the EU VAT Zone.

When establishing offshore companies, the client should be aware of the political and economic stability of the country.

Advantages: Generally no or low taxes, no public commercial register, no international law enforcement treaties or fiscal extradition agreements with other countries.

Disadvantages: See above.

What?	Who offers it
Excellent bank secrecy	Andorra, Bahamas, Cayman Islands, Isle of Man, Mauritius, Panama, Singapore, Nevis, BVI
Suited for holding companies	Cayman Islands, Hong Kong, Isle of Man, Vanuatu, UAE
Zero-tax-haven Exmp. Status	Belize, Cook Islands, Grenada, Mauritius, Seychelles, BVI, UAE
No income taxes from foreign sources	Costa Rica, Hong Kong, Seychelles, UAE
No taxes on capital gains	Andorra, Bahamas, Cayman Islands, Vanuatu, UAE
Captive Insurances	Bahamas, BVI, Cayman Islands, Hong Kong, Isle of Man, Mauritius
Ship's register and administration	Bahamas, BVI, Cayman Islands, Mauritius, Panama, Vanuatu, Singapore, Hong Kong
Individuals:	
No income taxes	Andorra, Bahamas, Cayman Islands, Vanuatu, UAE
Low income taxes	BVI, Hong Kong, Isle of Man, Mauritius
No inheritance tax	Andorra, Bahamas, Cayman Islands, Isle of Man, Mauritius, Panama, Singapore, Nevis, BVI
Bearer shares	Bahamas, BVI, Cayman Islands, Mauritius, Panama, Vanuatu, Singapore, Hong Kong

Advantages and Disadvantages of Tax Locations in the Caribbean and the Bermudas

Country	Advantages	Disadvantages	Taxes
Bahamas	Bank secrecy regulated by law, no automatic information exchange in tax matters with EU states.	Since 2006 Mutual Legal Assistance in tax matters, however not automatic, rather only upon request. Taking up residence: At least 150,000 B\$ must be invested in the country	No income taxes, corporate income tax, capital gains tax, withholding tax, gift or inheritance tax on individuals and companies
BVI	Bank secrecy regulated by law, no automatic information exchange in tax matters with EU states.	Cost of Living corresponds with the US Level.	Income tax 3-20%, corporate income tax 15%, foreign proceeds are tax free
Cayman Islands	Bank secrecy regulated by law, no information exchange in the event of tax offences, seventh largest banking center worldwide, high political stability	In the case of taking residence an investment of at least 180,000 USD is required, Cost of living approx. 18% higher than the USA	Pure Zero-Tax-Haven
Dutch Antilles	DBA with the Netherlands permits the transfer of profits to the Antilles at a favorable tax rate, no extradition treaties for fiscal offences	Information exchange agreement with OECD, no statutorily regulated bank secrecy, high taxation of residing legal entities	Non-Residents pay for all revenue generated on the Antilles approx. 3% income tax, no property tax, no inheritance tax, no withholding tax on dividends and interest. Offshore companies pay until 2020 5.5%, in addition tax privileges for certain companies exist
Bermudas	Tax haven for companies	No statutorily regulated bank secrecy, residence permit for foreigners is practically not possible, purchase of real property not possible, extremely high cost of living.	No income, corporation or withholding tax
Barbados	No currency restrictions, preferential custom's tariffs	Information exchange agreement with OECD	Non-Residents pay income tax of 1-2.5%, no capital gains tax,

			inheritance, gift, property or withholding tax on dividends and interest. An IBC pays, provided 100% is held by a foreign entity, 2.5% corporation tax. Domestic companies pay no taxes.
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International company formations for legal reduction of corporate taxes and limitation of liability: DTA

International tax laws in almost all countries differentiate between DTA and non-DTA relationships. A **Double Taxation Agreement (DTA)**, correctly described as **an agreement on the prevention of double taxation**, is an internationally recognized agreement between two countries that regulates to what extent taxation laws affect the parties to the agreement with regard to income earned within their territories. The DTA is designed to prevent the double-taxation of natural persons and legal entities who earn income in both countries. A DTA also describes the conditions for setting up a permanent establishment in the home country and/or the foreign country.

Excerpt of Article 5 of a DTA:

ARTICLE 5

PERMANENT ESTABLISHMENT

(1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially :

(a) a place of management ;

(b) a branch ;

(c) an office ;

(d) a factory ;

(e) a workshop ; and

(f) a mine, quarry or any other place of extraction of natural resources.

(g) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

(3) THE TERM "PERMANENT ESTABLISHMENT" SHALL BE DEEMED NOT TO INCLUDE:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise ;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery ;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise ;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(4) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person - other than an agent of an independent status to whom paragraph (6) of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

For most of our clients, this means that they are protected by an existing Double Taxation Agreement prior to setting up a Permanent Establishment in the home country (client's country of residence), as long as only a representative office, an advisory office (for support activities) or a storage warehouse is established in the home country. In contrast, most countries stipulate that in cases where no DTA exists, a representative office, a storage warehouse or an advisory office does constitute a Permanent Establishment in the home country. This would mean that global taxation or primary taxation of the foreign company would not take place in the foreign country at all but in the client's home country, even if the "place of management" is located in the country of residence (i.e., in the foreign country). The formation of a true offshore company (with no DTA) must be carefully considered in light of these factors.

As most countries have DTAs with **Cyprus, Switzerland, Singapore or the United Arab Emirates (UAE)**, the benefit of forming a true offshore company in these countries

is often clear. **Cyprus** taxes active companies at a rate of only 10%. As a member of the EU, it also benefits from the EU Freedom of Establishment law.

Singapore does not tax foreign-earned income, and the **UAE** imposes no taxes on any income whatsoever. In **Switzerland (Zug)**, the total tax burden for active companies equals about 15.5%. It is also possible to form a foreign company under a DTA scenario in which the company is subject to little or no taxes.

If, due to other considerations, an offshore company is nevertheless required, it should be structured as strictly as possible with regard to the law, and no representative or advisory offices or storage warehouses should be established in the client's home country. Offshore companies do generally offer certain benefits: No international law enforcement treaties, no fiscal extradition agreements with other countries, generally no public commercial register, and Exempted Company status (for companies that only generate earnings outside the country of residence).

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Publications:

"Jurisprudence of Panama Corporation Law"; "Jurisprudence 1903", all published by Editorial Portobelo, Republic of Panama; "Money Remittances Houses in the Republic of Panama", essay published in the comparative section of the electronic magazine Law and Bank.com;

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Born Zurich, Switzerland, 1966; admitted 1997, Zurich, also admitted in all German-speaking cantons. Education: University of Zurich, Law School (J.D., 1992). Experience: Clerk, District Court of Pfäffikon ZH, 1994-1995. Legal Assistant, Zurich based law firm, 1995. Associate, Müllhaupt & Partners, 1996-1998, Partner since 1999.

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Courses and Seminars:

- Center of Conciliation and Arbitration of Panama Advanced training course for Arbitrations and Conciliators, 1994.
- Investment Education Alliance
- Seminary Law of values and Regulations:
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He was Judge at the High Administrative Court, Liechtenstein, is member of the board of examination for lawyers and was lecturer for liechtensteinisches Gesellschafts- und Steuerrecht at the Hochschule für Technik und Wirtschaft, Chur.

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