§ 84 of the Taxation Act regulating tax evasion

In addition to § 5^1 of the Income Tax Act, tax evasion is also regulated by **§ 84 of the Taxation Act**.

It lays down the so-called economic interpretation principle, which means that taxation is based on the economic content, not the legal form.

According to this provision, where it is evident from the content of a transaction or action that the transaction or action is performed for the purposes of tax evasion, conditions corresponding to the actual economic content of the transaction or action apply upon taxation.

Over the years, a number of income **tax disputes [1]** have reached the **court**, in which the formal compliance of transactions with their content and the occurrence of tax evasion in a specific situation have been assessed.

In general terms, the **Supreme Court [2]** has reached the following three conclusions.

- No one is obliged to organise their activities in a way that entails a higher tax burden.
- Tax planning is considered legal as long as the form of the taxable person's transaction corresponds to its actual economic content and the tax laws are followed.
- In the case of a natural person, it is tax evasion if the person receives income in economic terms and avoids tax liability by distorting the economic content of the transaction.

NOTES

[1] Disputes concerning the transfer of holdings of well-known Estonian companies have received the most coverage in the media. These are focused on the question of whether the transition of a holding to a company owned by a natural person immediately before the transfer of the holding and the accompanying deferral of the tax liability of the income from the transfer of the holding can be treated as tax evasion or not. **Back to text**

[2] Clauses 13 and 14 of the **disposition 3-3-1-15-11 of the Supreme Court**. **Back to text**

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