



GINELLI WIENSKOWSKI SOB CZAK

T A X A N D L E G A L A D V I S O R S

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What is 'tax residence' ?

- The place (country) where a person is obliged to declare for tax purpose all his/her worldwide income.
- It determines what tax jurisdiction is applicable to taxation of the income.

How to approach the concept of 'tax residence' ?

The sequence of steps:

1. Analysis of internal Dutch and Polish tax regulations
 - If they don't collide – we have the final answer (no use of DTT between Holland and Poland),
 - If they collide – we must go to point 2

2. Analysis of DTT between Holland and Poland.

What does it mean that the internal regulations 'collide' ?

They collide if under the Dutch regulations a person has tax residence in Holland and under the Polish regulations this person has tax residence in Poland.

This situation is unacceptable – one person may have only one tax residence.

Polish tax regulations

A person has Polish tax residence if:

- She or he has the centre of vital interest in Poland (personal and economic relations)

or

- She or he stays in Poland over 183 days in a calendar year

Dutch tax regulations

There is no legal definition but the following facts are important:

- the place of the permanent home,
- the place where the spouse and children live,
- the place of personal and economic relations,
- The place where property and bank accounts are located.

Example of 'residence collision'

If, for example, a person stays in Poland longer than 183 days in a year (Polish residence under Polish regulations) and his/her family, home and property is located in Holland (Dutch residence under Dutch regulations)

Regulations of DTT between Holland and Poland:

If collision occurs, then:

a) he will be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he will be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he usually stays;

c) if he usually stays in both States or in neither of them, he will be a resident only of the State of which he is a national (citizenship);

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States will settle the question by mutual agreement

Example of resolving the tax residence collision

As the person's permanent home is in Holland, the regulation a) of DTT applies, so his tax residence is in Holland.

But individual situations are lots and each is different.....

Why it may be beneficial to be a Polish tax resident ?

A partner to a Polish limited partnership (spółka komandytowa)

- Limited partnership is a transparent company for tax purposes – only its partners are taxpayers, the company is not a taxpayer (one level of taxation),
- 19% income tax flat rate possible (no matter how high the income is).

Why it may be beneficial to be a Polish tax resident ? - cont.

- As a stockholder in a limited joint-stock partnership (Spółka komandytowo-akcyjna)
 - New possibility arising from a recent court verdict,
 - Taxation only of the money withdrawn from the company by the stockholders, not the company's accounting income as for other types of companies (after FS for a given year has been approved),

Why it may be beneficial to be a Polish tax resident ? - cont.

- 19% flat rate applicable,
- The moment of taxation postponed until the money is transferred to the stockholders bank accounts,
- Tax authorities still officially tempt not to confirm such a possibility

Other advantages of Limited Partnership and Limited Joint-Stock Partnership

- Regular business vehicle (quasi-legal person, which can, in its own name, acquire rights (buy movables and immovable, other rights), incur obligations (enter into contracts), sue and be sued,
- Very safe business vehicle: only General Partners are liable for partnership's obligations (civil and tax ones). A limited liability company (sp. z o.o.) may be the General Partner,
- Shareholders are not liable for obligations of the partnership (neither civil, nor tax ones), while Limited Partners are liable up a predefined amount (so called commandite sum).

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