

Tax authorities explain when economic immigrants must file tax returns in Poland

I. Tax residence based on objective circumstances, not declarations

On 29 April 2021 the minister of finance issued tax explanations on tax residence and on the tax liability of natural persons in Poland. The explanations cover the methods used to determine the place of residence for tax purposes (tax residence) of natural persons in Poland in accordance with Article 3 par. 1a of the Personal Income Tax Act (the PIT Act) and the extent of the tax liability of natural persons referred to in Article 3 par. 1 and 2a of the PIT Act. As stressed in the explanations, tax residence is not declarative in nature, but rather based on an assessment of all of the relevant facts and circumstances. Being a tax resident of Poland gives rise to an obligation to declare income in Poland on an unlimited tax liability basis.

II. Tax residence determines taxable person's tax liability

In accordance with currently binding regulations, natural persons residing in Poland are liable on all of their income (revenue) irrespective of the place of its source (unlimited tax liability). Such persons must, therefore, declare in Poland the income they earn in Poland, as well as the income earned abroad. In such situations, double taxation is avoided as a result of the application of double taxation elimination methods: the exemption-with-progression method or the proportional deduction method, in accordance with the double taxation treaties concluded by Poland. Whereas those who are not residents of Poland are subject to taxation only on the income earned in Poland (so-called limited tax liability).

III. Three factors determine place of residence

As reminded by the minister of finance, the criteria for determining place of residence for tax purposes are contained directly in the PIT Act. A natural person has his/her place of residence in Poland if he/she: has his/her center of personal or economic interests (center of vital interests) in Poland or stays in Poland for more than 183 days in a tax year. In the explanations the minister points out that the two criteria are separated by the conjunction "or", which means that the fulfillment of at least one makes it possible to deem a taxable person a resident of Poland. At the same time, each of the criteria need to be considered separately and independently. This means the need to perform a separate assessment of whether the taxable person meets the given condition (criterion).

Tax residence is not declarative in nature, but rather tied to an assessment of all the relevant facts and circumstances. Thus the minister of finance has presented tax explanations on how to determine such criteria as: personal ties, economic ties and length of stay in Poland.



IV. Residence of place with which taxable person has personal and economic ties

Presence in Poland of a center of life interests means having close personal or economic ties with Poland. And again — according to the minister — each of the two criteria are to be assessed separately. To be taxable in Poland it is enough to only have personal ties, and to only have economic ties. The minister stresses that tax residence is not based on a declaration, but on an assessment of all of the facts and circumstances. Thus in each individual case it is necessary to look at all of the facts and circumstances relevant to the given taxable person.

V. All of the taxable person's social activity determines personal ties

Personal ties consist of the existence of family and social relationships, social, cultural, sports, political and similar activities. In practice, the most commonly considered factor is the presence in Poland of a spouse, partner or minor children. The ministry explains that leaving for another country with one's entire family will in most cases result in a transfer of the center of vital interests to that country. Whereas leaving to work abroad, whilst the spouse and children remain in Poland, will most often result in maintaining the center of vital interests in Poland. For those who live alone it is in particular necessary to consider the country in which they keep their household and in which they take part in social, cultural or political life.

VI. Economic ties are determined by sources of income, credits, investments

Center of economic interests is in practice the place with which the person has close economic ties. This in particular means the natural person's economic ties with the given country, such as the place of gainful employment, main sources of income, investments, real estate and movables, credits, bank accounts, the place from which the person manages his/her assets, etc. It is not, therefore, just about determining if the person has, for example, a source of income in Poland, but also about other circumstances related to both gainful employment and to the costs of running a household or business and owning movables (e.g. a car). The explanations indicate that this is decided based on where such ties are more numerous. If, therefore, a taxable person operates a business, has a bank account and rents an apartment in another country, and in Poland only earns income from renting out the apartment he/she owns, then his/her center of economic interests is located in that country, not in Poland (in Poland the taxable person only has to declare the rental income).



VII. Length of stay includes each day of stay, including the day of arrival

As indicated in the explanations, the criterion of length of stay is deemed met after exceeding 183 days of stay in Poland in a given calendar year (the calendar year is the basic tax period considered during the settlement of personal taxes). Not exceeding this length of stay in Poland in a given calendar year results in this criterion not being met. The condition of being in Poland for more than 183 days in a calendar year does not mean that this has to be an uninterrupted stay. For a longer, but not uninterrupted period of stay in Poland (e.g. 3 years), it needs to be determined if the length of stay has exceeded 183 in any of the calendar (tax) years. Length of stay is calculated by using a method based on the “days of physical presence”. When counting days using this method one should consider all the days (and parts thereof, including the day of arrival and departure) spent in Poland.



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VIII. Taxable person can have dual tax residence, but cannot be double taxed

If a taxable person is considered a tax resident of another country (after meeting the criteria provided in the domestic tax laws of that country), and considered a tax resident of Poland based on the provisions of the PIT Act, then that person is a double tax resident. Such cases are subject to the special tie-breaker rules arising out of the relevant tax treaties, which make it possible to determine where the person resides for tax purposes. And so, if the person has his/her permanent residence in both countries, then he/she is considered a tax resident of only that country, with which he/she has closer personal and economic ties (center of vital interests). If this cannot be determined, the person is not a resident of either of the countries — then the person is a resident of the country in which he/she is usually present. If the taxable person is usually present in both or in neither of the countries — his/her nationality will decide. If the taxable is a national of both or of neither of the countries, then the countries will have to settle the question by mutual agreement.



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