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Peculiarities of Tax Residency of Individuals in Modern Conditions

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Abstract:

The article is devoted to the study of tax residency of an individual in the context of globalization and modern conditions of international cooperation.

Keywords: individual; tax resident; criteria.

JEL Classification: H21; H25; K34.

Introduction

The study of tax residency, individuals as tax payers and the definition of the criteria for such residency have become very important in the context of socio-political changes, international cooperation on financial and tax issues, obtaining and implementing a visa-free system, the globalization of the economy that are taking place in the world today.

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1. Research Analysis and Problem Statement

Such scientists as Pepeliaev (2015), Rossikhin (2018), Rossikhina and Shkilova (2018) and others should be mentioned among the scientists who have studied certain issues determining the tax residence of individuals. At the same time, there is no special study on the generalization of criteria for determining an individual as a resident of a particular country. That is why the purpose of our article is to try to define the criteria and features of determining the tax residence of individuals both in the world and in Ukraine separately.

Tax and legal regulations are applied to a certain territory and circle of people. There are some principles in the tax law in order to define this group of people: the principle of residence and the principle of territoriality. However, it is important to point out that taxation is based on two main principles:

(1) the principle of equality in the tax sphere of foreigners, stateless people and the citizens of the country in whose territory they get income;

(2) the right of the state, whose citizens get income abroad, to tax these incomes, the proceeds of which should be used to develop such territories (Krokhina 2006, 99).

The tax jurisdiction of the country extends not only to a certain territory, but also to people who are in any way connected with this territory (Rossikhina, Hultai and Shrub 2018, 262). To define such relationship in international tax jurisdiction, there are some institutions:

- the institute of residency;
- the institute of tax domicile.

The legal relationship between a country and an individual is manifested in the totality of their mutual rights and obligations and is determined by the institution of citizenship. The definition of the level of mutual rights and obligations in tax legal relations is a reflection of the tax residence institute of an individual and suggests the absence of a stable relationship in the relationship between a person and the state.

The principle of residence means that all residents, recognized in accordance with the tax laws of the state, tax all their income, got either on the territory of their country or abroad. It means that these people have full tax liability. And non-residents are taxed only income with a source of origin in the territory of this state. It means that non-residents have limited tax liability. The institute of tax domiciliation in relation to individuals is used as a place of permanent inhabitancy (residence) of an individual. The domicile criterion for determining the tax status of individuals is used, for example, by France (along with citizenship), the UK, Switzerland and other countries (Rossikhin, Burdin and Mykhalskyi 2018, 257).

The principle of territoriality of the object of taxation means that the income, got on the territory of the state, is subject to taxation, while other incomes with a source of origin outside are excused from taxation. As a rule, the tax sovereignty of a country is exercised within its territory, limited by the state border. However, exceptions are possible from this rule. The complex relationship between the United Kingdom of Great Britain and Northern Ireland can be a vivid example of the mismatch between the sphere of activities of general sovereignty and the sphere of activities of fiscal sovereignty. On the one hand, such 'royal possessions' as the islands of Guernsey, Jersey, Maine and the British Overseas Territories as Gibraltar, Bermuda, many of the 'Crown Departments' and some others have become the largest offshore centers, and today they attract low tax rates that are different from the UK tax rates in general, but at the same time providing the business with the same guarantees as in the UK. At the same time, these territories have their own tax legislation, and not the UK tax law, so, the UK sovereignty does not extend to these territories (Fiscal year, Self-Assessment tax returns.).

Thus, the first principle is taken as a criterion for the qualification of a taxpayer. The principle of territoriality is based on the nationality of the source of income. The use of such a principle in relation to an object is rather complicated, since the totality of the actual features of the object of taxation does not always have a material embodiment, according to which it would be possible to determine its territorial allegiance.

Pepeliaev, S.G. has defined this aspect well and he claims that according to actual characteristics, it is possible to determine the territorial allegiance only of those objects of taxation, the subject of which can be defined as a thing, from the point of view of civil law. But when the object of property tax is property and exclusive rights, it is quite difficult to determine the territorial allegiance of the object of property tax by physical characteristics (Tax law 2015).

Exercising any of these principles of equal use by all countries of the world would exclude any possibility of international double taxation. However, the tax laws of different states are based on different principles. So, the USA, Russia and Ukraine take the principle of residency as a basis. Other countries in Europe and Latin America use the principle of territoriality. So, for countries whose citizens and companies get significantly larger amounts of income from activities outside the country and from capital located abroad, the principle of residence is most often

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used to distinguish tax jurisdictions. And for countries where foreign capital plays a significant role, the use of the principle of residency is of great interest (Holovko, Kaganovska and Rossikhina 2018). Therefore, there are a lot of problems with the elimination of international double taxation in practice.

The application of general international legal principles is of great importance in international tax relations. The principle of non-discrimination, according to which individuals of another country are provided with tax conditions no worse than those provided to individuals of any other country. And the principle of reciprocity, which determines the granting to both national entities and relevant countries of similar rights and obligations in the field of taxation (Rossikhina, Hultai and Shrub 2018, 262).

Ukraine has introduced the principle of residency. According to the Tax code of Ukraine, residents are individuals who have their place of residence in Ukraine. The civil code of Ukraine (Article 29) defines that the place of residence of an individual is a housing in which they live permanently or temporarily (The Civil Code of Ukraine 2003). For tax purposes, it is important to determine the place of residence of minors and minors, since they are defined by tax legislation as independent taxpayers, although they do not have full legal capacity.

Thus, an individual who has reached the age of fourteen years freely chooses his place of residence, except for restrictions established by law. The place of residence of an individual aged ten to fourteen is the place of residence of his parents (adoptive parents) or one of them with whom he lives, the guardian or the whereabouts of an educational institution or healthcare institution, etc., in which he lives, unless otherwise the place of residence has not been established by agreement between the child and parents (adoptive parents, guardian) or an organization that performs the functions of a guardian with respect to it.

In the event of a dispute, the place of residence of an individual aged ten to fourteen years is determined by the guardianship and guardianship authority. The place of residence of an individual who has not reached the age of ten years is the place of residence of his parents (adoptive parents) or one of them with whom he lives, a guardian, or the location of the educational or health institution in which he lives. The place of residence of an incompetent person is the place of residence of his guardian or the location of the relevant organization that performs the functions of a guardian in relation to him (The Civil Code of Ukraine 2003).

But an important note is the definition that an individual can have multiple places of residence. If so, how to determine the residence of an individual who has two or more places of residence, which is not prohibited by Ukrainian law. In this case, the Tax code introduces the concept of permanent residence (The Paternal Code of Ukraine 2011). In its support, the Decree of the Cabinet of Ministers of Ukraine 'on the system of currency regulation and currency control' from 1993 to 2019 defined as a resident an individual (citizens of Ukraine, foreign citizens, stateless persons) who has a permanent place of residence on the territory of Ukraine, including temporarily located abroad. A non-resident is an individual (foreign citizens, citizens of Ukraine, stateless persons) who has a permanent place of residence outside of Ukraine, including temporarily located on the territory of Ukraine (Decree of the Cabinet of Ministers of Ukraine1993).

So, the tax and currency legislation establish the term of permanent residence, the quantitative (urgent) determination of which is not provided by applicable law. Therefore, the legislator determines, along with the qualification of presence, other criteria that can prove the status of a resident for an individual.

It is important to emphasize that the principle of residency fulfills the fiscal function of the budget. It is logical that absolutely all states establish strict criteria for residency to determine a wide range of foreigners in the status of resident. The definition of clear criteria for residence is an important issue in the context of globalization and cosmopolitanism. Naturally, the developed democracies of the world have developed unified rules for determining residence, without violating the tax sovereignty of each individual country. Ukrainian tax legislation has incorporated almost all the criteria developed by the world tax practice for years.

In some countries, the period for determining residency is not a calendar year, but a tax year that does not coincide with the calendar year. However, please note that for some countries, the tax year does not always coincide with the budget year (fiscal, financial or budget year). For example, in all EU countries and China, Israel, South Korea, Taiwan, the UAE, Brazil, Colombia, Indonesia, Mexico, Macao, Thailand, Singapore and Qatar, the budget year begins on January 1 each year and ends on December 31. In Australia, Bangladesh, Egypt, New Zealand, and Pakistan, the fiscal year is defined from July 1 to June 31. In the United Kingdom, Ireland, Canada, Hong Kong, India, Japan, and South Africa, the fiscal year is determined from April 1 to March 31. In the United States, Costa Rica, the Federal fiscal year begins on October 1 and ends on September 31. The exception is the United Kingdom, where the tax year begins on April 6 and expires on April 5 of the following year (Rossikhina, Svitlychna and Brusakova 2018, 293).

The legislation of most countries of the world requires regular confirmation of the connection of the tax subject with the territory of the country, establishing the fact of the actual presence of a person in the country for a

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certain time. The confirmation must be carried out personally and must be of a declarative nature. The information presented by an individual is accepted and considered by the specially authorized tax authorities of a particular country and a decision is made on such an application to determine an individual as a tax resident of that country and to determine the amount of his tax debt from all income that must be received both within this country and for its limits taking into account international rules for the elimination of double taxation, acting in accordance with international agreements between states.

We should agree with the opinion of Pepeliaev in Tax Law (2015, 505) that when determining the tax status of an individual, it is necessary to use a set of features:

- the test of physical presence;
- the test of habitual (permanent) housing location;
- the test of vital interest center;
- the test of the usual place of residence;
- citizenship test;
- agreement of financial (tax) authorities.

At the same time, it is important to understand that international agreements establish the above-mentioned clear sequence of application of these criteria for determining residence. If it is still not possible to determine the country where the person has permanent residence, as a result of consistent use of these criteria, this issue is resolved between the tax and financial authorities of the countries concerned in the process of negotiations. Bilateral negotiations between States are formalized by international legal agreements that must be ratified by both countries, after which they become part of domestic legislation and resolve the issue of double taxation and partial tax residency. Ukraine had concluded such agreements with 72 countries around the world by 2018.

It is also important to understand that the issue of how to incorporate international tax agreements into the national legal system is handled differently in different countries. There are three main approaches to this issue:

- an international tax agreement becomes part of the national legal system from the moment it is concluded;
- incorporation requires special approval from any government body, most often from the Parliament;
- it is necessary to adopt a special law to incorporate an international tax agreement into the national legal system.

However, if the incorporation of an international tax agreement is made, then a lot of questions arise to determine the status of a tax resident in practice, in the context of the constant movement of an individual between countries in the presence of economic interests in several countries of the world. In this regard, foreign states use the application principle of an individual self-determination of his residence in a certain period using the priority of the above signs. An individual must independently apply to the tax authorities with a statement to determine their tax status with a mandatory statement of the reasons for choosing a residence right before a certain tax period.

While implementing such a procedure, on July 23, 2018, in London, the Minister of Finance of Ukraine Oksana Markarova signed the Multilateral Convention on the implementation of measures related to tax agreements in order to counteract base erosion and profit removal from taxation (the Multilateral Convention MLI - Multilateral Instrument). Signing the Convention is part of the BEPS (Base erosion and Profit Shifting) action Plan (Understanding tax avoidance). Due to the gaps and inconsistencies in national and international tax laws, international companies reduce or avoid their income tax obligations. Thus, Ukraine loses revenue to the budget. To avoid this, on January 1, 2017, Ukraine joined the expanded cooperation Program within the framework of the Organization for economic cooperation and development (OECD) initiative.

The OECD member countries have developed an action Plan to combat base erosion and profit shifting (hereinafter referred to as the BEPS action Plan). The BEPS action plan includes 15 steps covering various areas of countering aggressive tax planning. 4 steps from the 15 steps, are mandatory for Ukraine (the minimum standard of the BEPS action Plan):

- step 5: Improving measures to combat tax abuse;
- step 6: Abuse prevention of benefits provided by bilateral agreements;
- step 13: Recommendations on transfer pricing documentation and disclosure by country;
- step 14: Improving the mutual agreement procedure through dispute resolution.

Revision of conventions for each country separately, further signing of reports and their ratification in the Parliament is a very complex and lengthy process that can take many years. The 15thstep of the BEPS-MLI action Plan was developed in order to enable more rapid revision of international conventions. By signing and ratifying the MLI Convention, Ukraine can simultaneously amend all or some of the existing double taxation conventions. Thus, by signing and ratifying the MLI Convention, Ukraine has simultaneously implemented step 6 and step 14 of the

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BEPS action Plan. The adoption of the Law of Ukraine 'on currency and currency transactions' from 21.06.2018 has been the important event, according to the provisions of which the free movement of currency is allowed. The law has established European rules for currency circulation for both legal entities and individuals (The Law of Ukraine). The liberalization of the foreign exchange market is a necessary part of the fulfillment of Ukraine's obligations under the Association Agreement, including the introduction of the principles of regulation of the movement of EU capital (according to the EEC Council Directive No. 88/361/EEC of 24.06.1988) (the European Union).

Conclusion

Summing up the above, (according to the BEPS rules) electronic exchange of information between countries will be implemented in the near future, regarding the receipt of income or conducting business or non-commercial activities of individuals who are the citizens of another contracting country. As a result, Ukraine, alongside with other countries, will receive the information about the income of individuals who have the status of a tax resident of a separate country. Based on the understanding that the tax rates for property and personal income tax in Ukraine are significantly lower than in many other countries of the world, foreign countries benefit quantitatively (fiscally) in this sense. However, Ukraine will have the access to information on the tax residence of Ukrainian citizens and a quantitative understanding of their foreign income, based on future currency liberalization.

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