



Human Capital News

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Determination of tax residence status in Ukraine

After issuing and then cancelling a long chain of different clarification letters regarding taxation of foreigners in Ukraine, the State Tax Administration of Ukraine issued its new clarification letter # 9094/7/17-0717 of 11 May 2010. Rather than clarify the current situation, however, it creates even more questions.

The letter states that a Ukrainian permanent residence permit represents only official permission for permanent residence and does not confirm that a foreigner actually resides (or permanently resides) in Ukraine. This provision of the letter, however, does not clarify, which document could substantiate the fact of a foreign individual's residence in Ukraine.

The letter also emphasizes that the Personal Income Tax Law of Ukraine (the Law) neither regulates the possibility for foreigners to obtain Ukrainian tax residence status automatically nor empowers or obliges a tax agent to determine an individual's tax residence status. According to their statement, we understand that the Tax Authorities insist on obtaining of the tax residence certificate (the Notification) as an obligatory condition for a foreign individual to be considered as a Ukrainian tax resident. At the same time, the Law in para 1.20.1 stipulates that voluntary determination of Ukraine as a main place of residence by a foreign individual (by means of obtaining the respective Notification from the Tax Authorities) is a sufficient condition (but not necessary or obligatory) for considering such foreigner as a tax resident in Ukraine.

In addition, clarification letter states that Ukrainian tax residence status should be determined within the reporting (calendar) year. This might mean that obtaining of tax residence status retroactively will be impossible even if a foreign individual met all the criteria for being considered as a tax resident in the respective reporting (calendar) year.

Unfavorably, the letter underlines that Ukrainian tax residence status takes effect starting from the tax period (*month*) indicated in the tax residence Notification that the Tax Authorities issue based on the individual in question's tax residence claim. It is worth mentioning that the current template of the tax residence Notification contains only one date in it, i.e. the date of its issuance. Therefore, we understand that the date of issuance of the tax residence Notification is the only date that could be considered as the date, from which foreign individual obtains status of a Ukrainian tax resident, unless a new template of the tax residence Notification is going to be introduced by the Tax Authorities. This would mean that a foreign individual should be considered as a Ukrainian tax non-resident with application of the respective tax rate to his/her income during the whole period up to the date of issuing such a Notification by the Tax Authorities.

Given this, we believe that such an approach of the Tax Authorities contradicts the Personal Income Tax Law of Ukraine, as the Law does not provide for a possibility to have status both of tax resident and tax non-resident of Ukraine within one reporting year. Moreover, the Law does not treat filing of the tax residence claim as an obligatory procedure in order to be considered as Ukrainian tax resident.

The clarification letter thus makes evident that, despite the business community's ongoing appeals to the Ukrainian Tax Authorities, the latter continue to follow the approach prescribed in the STAU's overview letter of December 2009, even though that letter was cancelled.