Residency, Non-Residency and Dual Residency

Residents

Although the rules vary, most jurisdictions define a “resident" as an individual who is in the state for other than a temporary or transitory purpose. Countries consider a person’s “residence" or home to be the place of his or her permanent home to where he or she intends to return to whenever absent from the state for a period of time. Most claim the right to tax an individual’s income if they are believed to be resident. Usually, they also impose tax on 100% of a resident’s worldwide income from all sources, including investment portfolio income.

Resident individuals are taxable on income and capital gains wherever arising worldwide (except for those with Non-Habitual Resident status) and not on a remittance basis (where taxation is based on income actually brought into Portugal) as occurs in some jurisdictions. Unlike the “*Residência*” (the Residency Permit issued by the Foreign Office or your local Council) residency for taxation purposes is factually determined. Individuals may be deemed to be tax resident in the following situations:

- when physically present in Portugal for more than 183 days in a calendar year; or
- when physically present for less than 183 days but have fixed a permanent physical home in Portugal by 31 December; or if, at the end of a tax year, owning a dwelling in Portugal that might reasonably be considered their habitual residency, individuals are generally considered to be resident in that tax year; or
- if the head of a family group is resident in Portugal for tax purposes, other immediate family members are normally also considered to be resident, even if living separately. However, if the foreign country has a tax treaty with Portugal, the treaty contains rules to determine residency. Residency qualifications may be modified under the terms of Double Taxation Treaties.

Non-Residents are taxable on income and gains arising in Portugal. When the paying entities are resident or assets located within or services performed in Portugal, then the following examples of income would need to be declared:

- Local rental income;
- Holiday lets;
- Capital gains on sale of shares;
- Capital gains from property sales;
- Fees from scientific, artistic or specialised services;
- Administrator/director's fees from resident companies;
- Domestically-sourced pensions;
- Lottery winnings.

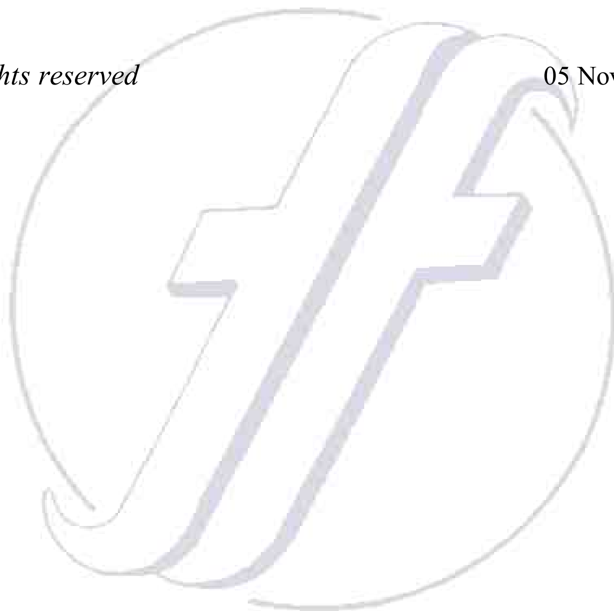
Employers should deduct income tax at source on earnings. This withholding is final, unless governed by specific treatment under a Double Taxation Treaty. On all sources of income, proof of tax paid is required when transferring the proceeds outside of Portugal.

Dual Residency

Because residency is broadly defined, most double taxation agreements recognize that a person could meet the definition of residency in more than one jurisdiction – *dual residency* – and therefore provide a "tie breaker" clause. Such clauses typically have a hierarchy of three to five tests for resolving multiple residency, typically including permanent abode as the major factor. Tax residency rarely impacts citizenship, although a given country's immigration laws may influence the definition of tax residency.

Nearly all tax treaties provide some mechanism under which taxpayers and the jurisdictions can resolve disputes. Generally speaking, the government agency responsible for conducting dispute resolution procedures under the treaty is referred to as the *competent authority* who generally have the power to bind their governments in specific cases.

Individuals who could be caught in the trap of dual residency and double taxation are retirees with a second home in another state; taxpayers who live in one state but have business activities or interests in another; individuals who have relocated to another state but return after a number of years; individuals who temporarily relocate overseas for a job assignment, and individuals who have severed all ties with a state but fail to establish residency in another.



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