euroFINESCO s.a.

FISCAL & EXPATRIATE SERVICES

DUAL RESIDENCY:
Potential Double Taxation

Relocation on either a temporary or permanent basis is increasing frequent in our shrinking world. Moving abroad can provoke an unanticipated tax bill with multiple jurisdictions claiming to be your state of residence and attempting to tax your income.

Increasingly, countries challenge former residents who attempt to move overseas. Although the rules vary, most states 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 which he or she intends to return to whenever absent for a period of time. Most claim the right to tax an individual's income if they are believed to be a resident. Usually, they also impose tax on 100% of a resident's income from all sources, including investment portfolio income.

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

Nearly all tax treaties provide some mechanism under which taxpayers and the jurisdictions can resolve disputes arising under the treaty. Generally speaking, the government agencies responsible for conducting dispute resolution procedures under the treaty are referred to as the *competent authorities* who generally has the power to bind their government in specific cases. The treaty mechanism typically calls for the *competent authorities* to attempt to agree in resolving disputes.

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 country 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 residence in another.

Factors used to determine residence

A major determinant of an individual's status as a resident for income tax purposes is whether he or she resides or maintains an abode and is present for 183 days or more (more than one half of the tax year).

Other evidence often considered in evaluating whether there has been a permanent change is by viewing an individual's *centre of interests*. These may include the following:

- Location of employment;
- Classification of employment as permanent or temporary;
- Location of business relationships and transactions, such as active participation in a profession or trade or substantial investment in or management of a closely held business;
- Serving on the Board of Directors for a business or charity;
- Whether a person's former living quarters were sold, rented out, or retained;
- Whether another property was leased/purchased in the new location;
- The amount of time spent in the country versus amount of time spent outside (183-day rule);
- The state where the taxpayer is registered to vote;
- The state of issuance of a driving license or fishing/hunting permits;
- Location of the school a family's child attends;
- Memberships in country clubs, social, or fraternal organizations.

In residency audits, some elements are likely to be reviewed:

- Credit card statements where charges were incurred, where the bill was sent, and the location of the account used to pay the bill;

- Location of bank accounts, investments, and other financial transactions such as automated teller machine withdrawals;
- Resident and non-resident fishing/hunting licenses;
- Motorway toll charges;
- Records of airline frequent flier miles;
- Jurisdiction issuing a driving license, vehicle registration, professional license, or union membership;
- Property tax abatements, credit applications and property tax bills;
- Church attendance and membership;
- Location of doctors, dentists, accountants, and attorneys;
- Official mailing address and where mail is received;
- Where an individual is registered to vote (and actually does).

If you live elsewhere but travel on a regular and frequent basis to another country, it is a good idea to maintain a diary that clearly indicates the dates on which you are in a specific state, accompanied by supporting records such as tickets and receipts.

Action steps to take when changing your residence

Changing one's residence takes planning and is a proactive process. While courts consider taxpayer intent in state residency disputes, they ultimately look to documents and facts to decide where the state of residence is. Careful documentation is key:

- Note the date of your change of residence;
- Document in writing the reason for the change in residence which shows basis and intent (i.e., permanent retirement, relocation, etc.);
- Obtain a driving license in your new state;
- Register your vehicle in your new state;
- File a resident income tax return in your new state;
- Revoke any property claims in your former state and file similar documents in your new state of residence;
- Register to vote in your new state;
- Open bank and/or brokerage accounts in your new state.

- Replace involvement with business, charities, and other organizations in your former location with activity in similar organizations in your new country of residence;
- Change the mailing address for all bills: banks, insurance, doctors, etc. to your new address;
- Keep a calendar of when you are in your former state versus when in the new one;
- Retain plane tickets, credit card statements, hotel records, etc. that will support your calendar;
- Change professional licenses to your new country (if applicable);
- Establish relationships with new doctors, dentists, accountants, attorneys, etc.

If you have previously filed a tax return in your current jurisdiction but are changing your residence, it is imperative that you closely observe the formalities of making a change of residence and that you retain all documentation you may need to prove your new residence. Tax law generally holds that you are not deemed to have created a new residence until you have abandoned your former one. In addition, be sure to keep the documentation until your former state's statute of limitations runs its course.

29 March 2019

HEADQUARTERS
Rua do Sol, 4
8200-448 GUIA (Algarve)
tel: +351 289 561 333
fax: +351 289 562 061

euro*FINESCO *s.a.

Lisbon Branch
Rua A.M. Cardoso, 15, 4ºD
1200-273 LISBOA (Chiado)
tel: +351 21 342 4210
fax: +351 21 342 4212

Madeira Branch
Rua do Aljube, 61, 2º Dtº
9000-067 FUNCHAL (*Sé*)
tel: +351 291 221095
fax: +351 291 221103

Internet
e-mail: info@eurofinesco.com
www.eurofinesco.com
PORTUGAL
mobile: +351 96 910 2813