

Polish Domiciliation*November 2006***Introduction**

For every foreigner living in Poland for more than a couple of years, the question of domicile is important in determining his or her tax liabilities. With some careful planning the risk of facing an unexpected tax bill can be dramatically reduced.

Domicile exists in both common law (the UK and its former colonies, the US, and Ireland) and civil law (the rest of the non-Islamic world) legal systems. It is a strictly legal concept although it is crucially important for determining tax liabilities. It is a fundamental principle in both legal systems that every person must have a domicile at all times. A domicile is not lost until another domicile has been acquired, and a person cannot have more than one domicile at a time for the same purpose.

A person is domiciled in the legal system of a given country or its sub-division. For example, an Australian expatriate from Melbourne is not domiciled in Australia because Australia has a federal system of government. Rather, s/he is domiciled in the State of Victoria. A Belgian expatriate, on the other hand, is domiciled in Belgium. Countries that have a federal system of laws, and thus a more complex approach to domicile, include Australia, Canada, Malaysia, and the US.

Polish personal income tax classifies taxpayers into those who have unlimited tax liability and limited tax liability in Poland. Limited tax liability means that a taxpayer is subject to Polish taxation on Polish source income only. By contrast, unlimited tax liability tax means that a taxpayer is subject to Polish taxation on worldwide income. The qualification for the limited tax liability is to have a non-Polish domicile.

Most short-term expatriates will qualify for limited tax liability, but the medium- to long-term expatriate needs to plan his/her affairs carefully to avoid losing the ability to minimize Polish tax obligations through tax-efficient structures and shelters.

So how to avoid a Polish domicile? The Polish Civil Code of April 23, 1964 is the primary piece of legislation, which contains a definition of the term "domicile" (miejsce zamieszkania). Article 25 states that a person's place of domicile is the location in which that person resides with the intention of permanently remaining there. The Polish Supreme Court stated in 1993 that the full set of circumstances must be taken into account when determining whether a Polish domicile exists. This demonstrates that the Polish courts accept that the fixing of a person's domicile is not always a straightforward matter and intention has to be given at least equal weight with the factual state of affairs at the time.

Intention is always an issue with expatriates, as a potential retort to any inquiry concerning future intention is that the expatriate plans to leave in the current year due to work, family or other reasons.

Factors which can indicate that an expatriate has a heightened risk of acquiring a domicile in Poland include: owning more than one property in Poland; marriage to a Polish citizen; children with only Polish citizenship; holding a permanent residence card or acquiring Polish citizenship; or substantial investments in Poland including funds on deposit in Polish banks.

Among the steps that expatriates should take to minimize the risk of acquiring a Polish domicile are: membership of and subscription to a home-country professional or cultural organisation; subscription to home-country newspapers and magazines to be sent to the temporary address in Poland; ensure that there is home - country accommodation available throughout the length of the secondment in Poland, and that this can be evidenced. This property need not necessarily be owned but should be available for immediate reoccupation.

An expatriate should also obtain a Polish language translation of an opinion of a home-country tax adviser that the domicile is located there.

It is always advisable to seek professional advice in order to determine domicile status. This may involve lawyers or tax professionals in the home country as well as Poland.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.