



Resident and Non resident Persons in Theory and Practice Tax – Case of Kosovo

Fitore MORINA¹

Abstract: In each country there is the attempt to impose their jurisdiction persons who derive income and require sufficient connection between the state and these persons to enable the collection of these revenues on behalf of taxes. However, it should be asked which connection is required between the state and subjects of law to achieve this goal. There is a number of factors stemming from the subjects of law that can create report - link between the state and subjects of law, such as: citizenship, residence, nationality, presence in the state concerned, etc. Tax systems in the country (domestic tax systems) will determine which subject will be considered for the purposes of the tax legislation of the respective state tax subject to domestic (resident) and which foreign (non- resident). In this context, local tax legislation must modulate two basic issues: The first, are the characteristics of natural and legal persons who are established, organized and operate within the boundaries of the respective state (resident) and the Second, the characteristics of natural and legal persons who are established and organized under the laws of foreign (non- resident).

Keywords: Resident; non resident; tax systems; tax subject

1. Introduction

In theory and practice tax, many efforts have been made to the definition of non-resident persons, separately from resident persons. However, this effort resulted as impossible for the only reason, because the subjects of the law are closely linked with each next. Therefore, even some of the workers, bureaus and organizations of prominent local and international level, legislation dealing with tax evasion, in particular, failed to make the definition of persons not resident in the form of offline by persons resident.

¹ PhD, Department of Financial Law, Faculty of Law, University of Prishtina, Address: Agim Ramadani Str.p.n., 10000, Prishtina, Republic of Kosovo, Corresponding author: fitore.morinal@uni-pr.edu.

Residence refers to legal status of persons in the respective country or in general to justify tax those persons on income from all sources. In the case of individuals resident status in tax theory and practice is determined on the basis of certain facts and features, especially should you referred to the personal level of connection with the State concerned, eg the number of days spent in the State concerned, the existence of personal and economic ties with the State concerned, etc. In the case of individual persons other than those two approaches exist in the case of the definition of non-resident persons. One approach is based on formal criteria such as country of registration or incorporation, while another approach is based on real criteria such as place of effective management, control and management center, the main directorate or principal place of business

Many countries apply both approaches to the tax case, example: company will be considered a resident if it is incorporated or effectively management is in the state in which it is concentrated. The concept of residence in the treaties for the elimination of tax double based on the concept Residents defined by the tax systems of states and as it is formulated by the Contracting States at least to the extent that it allows for tax inclusive or full responsibility for tax being based on criteria such as place of residence, place of effective management, etc. Given this definition of non - resident tax legislation and it relates a contrario - making the definition of persons resident, ie all legal and natural persons who do not meet the conditions laid down in the test for resident are considered non- resident.

In the case of individual persons other than those two approaches exist in the case of the definition of non-resident persons. One approach is based on formal criteria such as country of registration or incorporation, while another approach is based on real criteria such as place of effective management, control and management center, the main directorate or principal place of business. Many countries apply both approaches to the tax case, example: the company will be considered a resident if it is incorporated or effectively management in the state in which it is concentrated. The concept of residence in the treaties for the elimination of tax double based on the concept Residents defined by the tax systems of states and as it is formulated by the Contracting States at least to the extent that it allows for tax inclusive or full responsibility for tax being based on criteria such as place of residence, place of effective management, etc. Given this definition of non-resident tax legislation and it relates a contrario - making the definition of resident persons, all legal and natural persons who do not meet the conditions laid down in the test for resident are considered non-resident. In this context and as a result of this definition becomes the

legal definition of non-residents. The definition of the concept of residence is particularly important for systems where applicable method of income tax from all sources.

2. Legal Nature of the Resident and Non resident Persons

Residence refers to legal status of persons in the respective country or in general to justify tax those persons on income from all sources. In the case of individuals resident status in the theory and practice determine tax and facts on the basis of certain characteristics, especially should you referred to the personal level of connection with the State concerned, eg the number of days spent in the State concerned, the existence of personal and economic ties with respective state, etc. In the case of individual persons other than those two approaches exist in the case of the definition of non-resident persons.

One approach is based on formal criteria such as country of registration or incorporation, while another approach is based on substantive criteria such as place of effective management, control and management center, the main directorate or principal place of business.

So on questions about the differences between countries for the legal form that has been regulated and what we mean by the concept of “place of effective management”, here certainly noticed differences in the laws of countries in the region, the subject in which the concept, that of the UK or other countries, have determine when a company is resident or non-resident tax.

According to the UK legislation, the term “management and control center” is used and developed this notion by the courts, by reference to the highest level of management where exercise board of directors (Russo, 2007, p .7)

Other states, where you usually refer to the terms “effective” or “real” management, lower levels of management may consider those criteria which determine where the company stands for tax purposes.

Usually, the tax systems used the above criteria in combination, when and where a particular company within the territory considered to be resident or non resident. Different states apply both approaches to the tax case, example company will be considered a resident if it is incorporated or effectively management in the state in which it is concentrated. The concept of residence in the treaties for the elimination of tax double based on the concept Residents defined by the tax systems of states

and as it is formulated by the Contracting States at least to the extent that it allows for tax inclusive or full responsibility for tax being based on criteria such as place of residence, place of effective management, etc. For because of the importance that permanent establishment as a relevant fact to configure the following legal residents will treat in more detail.

3. The Impact of Resident and Non resident Persons in Economic Development of Kosovo

Once the issue of international taxation has been important to a narrow circle of specialists in tax, tax advisers initially to large multinational corporations and their antagonists in the departments of taxation arising from the governments themselves. As countries of the world that are economically elevated importance of these issues has become even greater. Most of firms small and medium now charged with cross-border transactions posed cause them and their tax advisers, dealing with international taxation issues, more than usually happens.

Most international governments should be concerned with many international taxation, how to protect their own state taxpayers as well as to create an enabling environment for foreign investors. International taxation planning is firmly established, particularly based on tax rules that determine the respective state itself. So, we are obliged to produce some detailed levels in some cases or tax practice.

Then we will suffer if we do not focus on the general and fundamental principles of international tax planning structure. We must balance the specific needs and general illustrating to attend the general principles referring to current practice in different state. There existed no international tax planning that can serve any tax practice of states in general. Sense of the term “international taxation” to which we refer to international law implies terms of income tax to individual states. With some exceptions, tax laws are not “international”. They are created by the sovereignty of the state.

The purpose of this that we call international taxation, in this context is extremely wide. It includes the taxation issues that arise in the law on taxation of income that includes some foreign element. The standpoint of taxation of income on Cross - border deals in on goods and services is an important category of international taxation. Other apply to multinational enterprises, then it occurs in other categories of individuals and investment as other categories through cross- border taxation -it applies to individuals who do business abroad resident.

Some international taxation issues arising from the situation more complex. One such example is the reorganization of a multinational collaborators from foreign countries. Another issue tax particularly important international arising from tax laws of most states if a resident individual is trying to achieve the deduction to support a child or spouse/depend that stays temporarily as foreign/the State.

The international taxation law of the country has two dimensions: 1. "Taxation of resident individuals and corporate income derived from foreign countries, and 2. Taxation of non-residents' income coming from the mother country (their state resident)." (Brian, Arnold, & McIntyre, 2002, p. 2).

So, clearly shows what is taxation of foreign income for a state (generally refers to the country of residence) is the taxation of non-residents to other state (generally it refers to the state of the source "source country") involving. Transaction export of capital or other resources, the state often refers to an analysis of taxation as a foreign investment "bound outward". So controversial term "inward-bound" (Brian, Arnold & McIntyre, 2002, p. 165) referring to used to import transactions include capital from a foreign country. -bound Inward transaction is a typical case of states invocation laws for taxation of non-residents on their income from their resident country. While outward -bound - is involvement of the laws of taxation on foreign income of resident taxpayers.

In some circumstances, a single transaction can have consequences in both kinds of laws (domestic and international) is one such example liquidation of foreign corporations extends beyond international. It may include property taxation, gifts, inheritance, taxes and overall health of a variety of special situations.

The international aspect of taxation of gifts of property are for particular importance. For example, taxes on health are of great importance for international involvement when non resident receives gift from a person resident or dies when the owner of the property being different in another country foreign.

4. Concluding Remarks

Kosovo applies the method of taxation of income from around the world (worldwide method of Taxation) for residents. Tax law on corporate income provides that resident taxpayers are taxable on their income derived from sources in Kosovo and abroad. While the law provides that non-residents are taxable in Kosovo only in respect of income from sources in Kosovo. Tax treaties must be ratified to become

part of domestic law. According to the Constitution, international treaties ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official newspapers of the Republic of Kosovo.

Moreover, the Constitution of the Republic of Kosovo in Article 19, the implementation of international law provided that: “The international agreements ratified and legally binding norms of international law have superiority over the laws of the Republic of Kosovo.” And Law tax on corporate income, referring to measures to avoid double taxation gives priority to international treaties before the domestic law. The tax legislation of Kosovo has adopted as far as the basic principles could *acquis communautaire* in the field of taxation. This can be easily noticed in the analysis of many institutes of tax law to all applicable taxes in Kosovo. Mainly it must emphasize the adoption of models and legal institutions of the OECD Convention. To be effective national legislation, however, shall be tax amendments and interpretations often within short periods of time seeing how I respond to the tax legislation, the new circumstances. The purpose of international treaties is facilitating trade and investment communication in general, as well as the elimination of the military tax. The main importance of international treaties is to eliminate double taxation for resident and non-resident persons to Kosovo. Treaties also limit or eliminate the source of the state tax on the respective types of income and require state residents to predict the source of tax incentives for the state in general.

5. References

Finnerty, Ch.; Merks, P.; Petriccione, M. & Russo, R. (2007). *Fundamentals of International Tax Planning*. *IBFD*, pp. 7.

Arnold, J.B. & McIntyre, J.M. (2002). *International Tax Primer*. 2nd Edition. Kluwer Law International, pp. 165.

Harris, P. & Oliver, D. (2010). *International Commercial Tax*. Cambridge: Cambridge University Press.

James H.; Douglas, H.J. & Manchin, J. & Perdue, S. (2010). *The Fiscal Survey of States*. National Governors Association. *National Association of State Budget Officers*, June.

Rohtagi, R. *Basic International Taxation*, 1st or 2nd Edition. Richmond. Tiley, J assisted by Loutzenhiser, G. (2008). *Revenue Law*. Oxford: Hart Publishing.

Baker, P. *Double Taxation Conventions and International Tax Law*. 3rd or the Latest Edition. London.

Cerioni, L. (2007). *EU Corporate Law and EU Company Tax Law. Corporation, Globalization and law*. Edward Elgar Publishing Limited.

Block, D.C. (2004). *Corporate Taxation*. 3rd Edition. NY: Aspen Publishers.

Larison, J. (2010). *Partnership taxation: an application approach*. Durham, NC: Carolina Academic Press.

Simovic, H. (2005). Proracun europske unije/European Union budget. *WP. FTP*, No. 3/2005, IJF, Zagreb.

Burke, M. (2007). *Taxation of Individual income*. Lexis Nexis/Matthew Bender. 8th Ed.

Gruber, J. (2005). *Public Finance and Public Policy*. Hardcover.

Bossche, V.D.P. (2008). *The Law and Policy of the World Trade Organization*. Text, Cases and Materials. Paperback.

P. Schoettle, P.F. (2003). *State and Local Taxation: The Law and Policy of Multi-Jurisdictional Taxation*.

Karayah, J.D.J.; Neff, W.J. & Gupta, S. (2003). *State and Local Taxation: Principles and Planning* Hardcover.

Altus-Buller, M. (2008). *Income Tax Fundamentals*. E-book.

Oliver, D.P. (2003). *Tax Policy, Readings and Materials: Taxation* Hardcover.

Stiglitz, J. (2006). *Making Globalization Work*. WW Norton September.

Stiglitz, J. (2005). *Fair Trade for All*. Oxford: Oxford University Press.