

THE TAXATION OF NON-RESIDENTS IN THE MOVEMENT OF INTERNATIONAL CONVENTION AND INVESTMENT APPEAL

Annotation. The article is devoted to crucial aspects of taxation of non-residents. General principles of taxation of non-residents in the world, in particular in Ukraine are reported. Attention is also focused on the major problems in this sphere: double taxation and dual residence. On the ground of theoretical material a list of steps for improving tax legislation and mobilization of foreign capital in Ukraine is elaborated.

Анотація. Розглянуто проблемне питання щодо оподаткування нерезидентів. Висвітлено основні засади оподаткування нерезидентів у світі, зокрема і в Україні, а також приділено увагу головним проблемам цієї сфери – подвійному оподаткуванню та подвійному резидентству. На основі теоретичного матеріалу сформовано перелік заходів задля поліпшення податкового законодавства та залучення іноземного капіталу в Україну.

Аннотация. Рассмотрен проблемный вопрос налогообложения нерезидентов. Освещены основные принципы налогообложения нерезидентов в мире, в частности и в Украине, а также уделено внимание главным проблемам этой сферы – двойному налогообложению и двойному резидентству. На основе теоретического материала сформирован перечень мероприятий для улучшения налогового законодательства и привлечения иностранного капитала в Украину.

Keywords: non-resident, taxation, residence, double taxation, Tax Code, international tax conventions.

Globalization, territorial expansion of the European Union, economic integration, and also the international migration of people and capitals essentially influence financial and economic processes and taxation in particular.

Creation of joint ventures, movement of labor and capitals provide the activation of tax policy to the external economic direction in Ukraine. In this connection there is a problem of taxation of non-residents in Ukraine.

The aim of the article is to investigate the tax policy of Ukraine as for non-residents and to develop recommendations as to the improvement of that policy. According to this purpose the following range of tasks is outlined: to study theoretical material, concerning the essence of Ukrainian legislation for non-residents; to investigate the problem in the movement of tax conventions; to examine influence of the taxation of non-residents upon mobilization of investment; to work out a list of proposals to promote development of Ukraine in this direction. The research object is the taxation processes in the movement of international agreements and the affected investment appeal. The subject of the study is the set of principles of the taxation of non-residents in Ukraine.

Under the market transformations of economy works of many leading domestic economists are devoted to taxation research: A. D. Vasilik, I. A. Lunina, S. A. Lutsishin, P. V. Melnik, A. M. Sokolovskiy, V. M. Fedosov, L. I. Shablistaya and others. However the tax matters of non-residents in economic works of the named scientists are researched fragmentary and need further investigation [1].

According to the article 14.1.122 of Ukrainian Tax Code non-residents are:

foreign companies, organizations or their branches, subdivisions set up under legislation of other states, which are accredited in compliance with Ukrainian laws and situated in the territory of Ukraine;
diplomatic representation, consulate and other official representation of international organizations or other states;
physical persons who have a permanent residence abroad [2].

The taxation rules for residents and non-residents are not similar. Ukrainian tax legislation is built on the principle of non-discrimination and equal terms of taxation for any business entity in Ukraine. As for foreign investors, their taxation is provided under the national legislation.

On 1 January 2011 the Tax Code of Ukraine came into effect, which significantly changed the rules of taxation of non-residents. The new rules were aimed to block tax minimization schemes with involvement of foreign structures and holdings.

Main changes of tax regulations introduced by the Tax Code concern taxation of income generated in the territory of Ukraine. In accordance with the Tax Code taxable income of non-resident includes:

interest, dividends, royalties and rent (passive income);
freight and engineering fees;
income from sale of real estate;
income from securities trading, unincorporated joint ventures and performance of long-term contracts;
payments in respect of cultural, educational, religious, sport or entertainment activities;
agent, commission or brokerage fees;
insurance payments and premiums;
charitable contributions and donations;
other business income [2].

It is worth saying that for the purposes of the taxation, permanent establishments of foreign companies are considered as non-residents of Ukraine. Previous tax laws considered them as residents.

The concept of tax jurisdiction has an important value levying a tax from foreign juridical persons. This issue is dealt with on the basis of two criteria: residence and territoriality. The criterion of residence lies in the fact that the incomes of non-residents received in this country are subject to taxation only in this country. The criterion of territoriality is based on a national identity of the income source. Any incomes which are received abroad are exempted from taxes.

Each government chooses its own approach to application of these criteria. For example, in the USA non-residents pay the corporate tax if they sell goods in the USA through the branches and departments. Accordingly, the American companies working abroad should pay the income tax in these countries. As a result, they pay bigger amount of tax than residents. The criterion of territoriality is dominated in France, Switzerland, states of Latin America.

Ukraine (as well as Poland, Russia) combines both criteria. The choice of this or that criterion, as a rule, is connected with national interests of the country. As in the economy of Ukraine foreign capital plays an important role, the preference is given to the criterion of territoriality.[3]

The absence of the uniform approach in the world gives birth to the problem of double taxation. It arises when the object of taxation suffers similar taxes more than once. These are usually incomes from employment or from capital. Also there are differences in definition of residents in various countries. This fact leads to dual residency of the company.

The problems of double taxation or dual residency are settled with conclusion of conventions and arrangement of some discrepancy between native and international legislation. There are about 1000 international tax conventions in the world. The general feature of international tax conventions is prior to national laws.

Ukraine uses international tax conventions too. It has already signed contracts with more than 50 countries of the world.

The tax treatment of non-residents is one of investment climate factors. The attraction of foreign investment capital is very important for the Ukrainian economy as it has insufficient resources. Europeans are sure that Ukraine is quite an attractive state to be invested. There are free markets, low price of labor power, favorable geographical position, etc. However, there are continual changes in laws which don't make better the investment climate in Ukraine.

There is the same taxation scheme for all entrepreneurs in Ukraine in law but non-residents pay a lot more than others. So according to experts of the European center of economic research investment risks in Ukraine constitute 80 % [4].

In our opinion, for the attraction of foreign capital which will allow to influence positively the development of economy of Ukraine, it is necessary to implement the following recommendations:

To reconcile the taxation of incomes of the investors-non-residents received in the form of dividends, with the taxation of similar incomes of investors-residents.

When signing international agreements on elimination of double taxation it is reasonable to apply a principle of residence and territoriality in combination. Also it will allow to interest potential non-residents in joint activity. It adds some extra income in the budget from tax payment.

To expand a circle of the countries with which it is necessary to conclude international agreements (Australia, Argentina, Ireland, Jordan, Cyprus, China). It helps to avoid the double taxation of non-residence.

To raise motivation of investors through granting tax credits and tax holidays.

To give the status of a free economic zone to economically backward regions in order to attract foreign investments.

Realization of these measures will promote elimination of double taxation and encouragement of inflow of the foreign capital which is extremely necessary for the development of domestic economy.

Generally, the rules of taxation of non-residents introduced by the Tax Code are quite positive and close to the European standards of taxation. Nevertheless, the Tax Code imposed some restrictions, which aim to prevent minimization of taxes and must be considered by foreign companies when planning transactions with Ukrainian partners. The rules of game changed but it does not mean that foreigners cannot efficiently conduct business in Ukraine.

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