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Taking counsel

In order to help readers understand the new, postaccession legal framework of the Baltic states, The Baltic Times is launching a regular column in which readers can ask local lawyers and specialists about the legal issues that affect them. Those interested in submitting a question should e-mail the editorial staff at editorsdesk@baltictimes.com

As a citizen of the EU who has just arrived in Latvia to work full time, where will I have to pay my income tax for 2004? What if I work part of the year here and part of the year in my home country?

An answer to this question may differ depending on many different circumstances. This might be a straightforward case if a EU citizen lives permanently in Latvia, has his or her family here, owns a house and a dog. It is more difficult though if the house, or even several of them, are situated abroad, and the family moves instantly from one place to another. Working part-time in different countries nowadays is no wonder at all. This requires the choice of resident country to be made between two or more countries; therefore, the applicable law should be determined first.

Residence for individual income tax purposes may be determined combining the Latvian tax law and a corresponding tax treaty, if any. After May 1, 2004, the tax treaties remain the same as before. At the moment Latvia has effective tax treaties with all EU member states, except for Cyprus, Hungary, Luxembourg and Austria.

First of all, it must be determined whether in accordance with the Latvian law the person is a resident of Latvia. As a rule, Latvian resident individuals are taxable on their worldwide income, while nonresidents - on the income generated in Latvia. It must be noted that "residence" for tax purposes does not match with the one for immigration.

The Latvian law sets three criteria in order to be able to treat an individual as a resident for Latvian income tax purposes, the two of which applicable in the case at hand are:

- The place of permanent residence for such person is Latvia, or
- Such person is present in Latvia at least for 183 days during any 12 month period

If he or she is a resident of Latvia and according to a domestic law of another country - a resident of that country as well (or is not a resident in either state), the corresponding tax treaty sets forth "tie-breaker" clauses.

The tax treaties usually stipulate the term "residence" to have the following features:

- State in which he or she has a permanent home available (it mostly refers to the person's attitude - in which country is home in his/her opinion); if there are permanent homes in both states, the person will be deemed to be a resident only of that state with which his or her personal and economic relations are closer (center of vital interests such as family, church, main source of income, etc.);
- If the state of vital interests cannot be determined, or if there is no permanent home available, the person will be deemed to be a resident only of the state in which he or she has a habitual abode (here time of stay is of essence);
- If he or she has a habitual abode in both states or in neither of them, the next test is nationality;
- If he or she is a national of both states or of neither of them, the competent authorities of the contracting states shall settle the question by mutual agreement.

Determination of the residence for taxation purposes for internationally mobile individuals quite often turns out to be further complicated, stumbling against such concepts as "permanent home," "vital interests," "habitual abode," etc. Therefore, each particular case many need a more careful investigation even if the case looks simple at the beginning.

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