

LESSON 8: DETERMINATION OF RESIDENCE

Introduction

In taxation, residence of an individual plays an important role in the determination of the tax authority to which the individual would be liable to pay his tax. However, there is difference between the place an individual is resident and the place he is deemed resident for tax purposes.

Determination and Importance of Residence

In personal taxation, determination of residence is vital, for the purpose of identifying the relevant tax authority of a taxpayer. The First Schedule of PITA provides details for the determination of residence.

Resident Individual

An individual is regarded as resident in Nigeria in an assessment year if he:

- (a) Is domiciled in Nigeria;
- (b) Sojourns in Nigeria for a period or periods in all amounting to 183 days or more in a 12-month period;
- (c) Serve as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria.

Non Resident Individual

A non-resident individual is a person who is not domiciled in Nigeria or who stays in Nigeria for less than 183 days in a 12-month period but derives income or profit from Nigeria. A non-resident individual becomes liable to tax in Nigeria from the day he commences to carry on trade, business, vocation or profession in Nigeria. In the case of employment income, he is liable to tax in Nigeria when he becomes a resident.

Residence and Nationality

Residence should not be confused with nationality. The Nigerian tax laws attach importance to residence and not nationality. Therefore, whether you are a citizen of Nigeria or a citizen of another country, the same standards apply to you as far as you are resident in Nigeria. The same condition will also apply to an individual who is not resident in Nigeria whether he is a Nigerian or a foreign national.

Place of Residence

“Place of residence” in relation to an individual, means a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest-house or other place at which he is temporarily lodging, unless no more permanent place is available for his use on that day.

Principal place of residence

“Principal place of residence” in relation to an individual with two or more places of residence on a relevant day, not being both within any one territory means:

- (a) in the case of an individual with no source of income other than a pension in Nigeria, that place or those places in which he usually resides;
 - (b) in the case of an individual who has a source of earned income other than a pension in Nigeria, that place or those places which on a relevant day is nearest to his usual place of work; and
 - (c) in the case of an individual who has a source or sources of unearned income in Nigeria, that place or those places in which he usually resides.
- (d) In the case of an individual who works in an office or operational site of a Company or other body corporate, the place of which the branch office or operational site is situate; provided the operational

site shall include oil terminals, oil platforms, flow stations, factories, Quarries, Construction sites with a minimum of 50 workers etc.

Residence of Different Categories of Individuals

Liability to income tax is often determined according to whether a person receiving income is resident in a state for a particular year of assessment.

A taxpayer is therefore liable to the tax authority of the territory in which he is deemed to be resident for a year of assessment.

The following rules guide the determination of residence;

(a) An individual whether in employment or whose only sources of income are unearned income is deemed to be resident for a year of assessment in the territory in which he has a place available for his domestic use in Nigeria on the first day of January of the assessment year, and does not include any hotel, rest house or other place at which he is temporarily lodging.

(b) An executor is deemed to be resident in the territory in which the deceased individual was last deemed to be resident or would have been deemed to be resident if the law had been in force prior to the death of his date.

(c) A trustee of any trust or settlement is deemed to be resident where all the income of the settlement or trust for a year of assessment arises. Where the income arises in more than one territory or where the tax authority cannot be determined, the Federal Board of Inland Revenue is the tax authority.

(d) Partners in partnership are deemed to be resident where the principal office or the place of the partnership is situated on the first day of that year or is first established during the year.

(e) A village or an indigenous community is deemed to be resident in the territory in which the community is found.

(f) An itinerant worker is deemed to be resident where he is found in a year of assessment.

(g) An individual not being a person assessable by FBIR (S. 2, 1 (b) who holds a foreign employment on the 1st day of January in a year of assessment or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall

be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences as the case may be

(h) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, or who had a place or principal place on that day shall be deemed to be resident for that year in the territory in which that place or principal place or residence was situated on that day.

MEANING OF INCOME

Income chargeable to tax, is the aggregate amount, each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria, including:

(a) Gain or profit from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

(b) Any salary, wage, fee, allowance or gain or profit from employment including compensation, bonuses, premiums, benefits or other perquisites allowed, given or granted by any entity to an employee, other than those specifically stated as non-taxable.

For the purpose of Personal Income Tax and place of residence, income is classified into Earned and Unearned.

Earned Incomes

“Earned incomes” in relation to an individual, means income derived by him from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect of a previous employment. It includes profits, salaries, wages, commission, bonuses, etc.

Place of residence:

- (a) An individual who has a source of earned income in Nigeria, for a year of assessment, other than from employment or a pension, shall be deemed to be resident for that year in the territory in which he had a place or principal place of residence on the 1st day of January in that year.
- (b) If the source of the income is first acquired by the individual during the year of assessment, and he had no place of residence on the first day of that year, he shall be deemed to be resident for that year, in the territory where he first establishes a place of residence during that year.
- (c) In any other case, the individual shall be deemed to be resident for that year, in any territory from which any part or the whole of his earned income, arising in Nigeria is derived, if the income is derived from more than one territory, in the Federal Capital Territory.

Unearned Incomes

These are incomes derived from sources other than employment, business or reward for services rendered. It includes investment incomes such as rental incomes, dividends, royalty, earnings from trademark, patents, etc. Others are gifts, inheritance and bequeaths.

Place of residence:

- (a) An individual who has no source of earned income in Nigeria for a year of assessment, but has one or more sources of unearned income in Nigeria for that year, shall be deemed to be resident for that year, in the territory in which he has a place or principal place of residence, on the 1st day of January of that year.
- (b) If all the unearned income of the individual for that year arises in one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year in that territory where the income arises.
- (c) If the unearned income of the individual arises for that year, in more than one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year, in the territory from which any part of the unearned income arises.

Corporation Sole

A Corporation Sole or body of individuals other than a family or community, shall be deemed to be resident for a year of assessment, in the territory in which its principal office in Nigeria is situated, on the 1st day of January in that year or, if it has no office in Nigeria on that day, in a territory in which any part or the whole of its income liable to tax in Nigeria, arises for that year.

Resolving Dispute over Residence Rule Application

- (a) Where the territory of residence of an individual for a year of assessment may be determined under more than one of the preceding circumstances, it shall be determined by the first determined circumstance applicable.
- (b) If, by reason of (a) above, a determination of residence of an individual for a year of assessment, fails to be revised by a tax authority, other than that of the territory in which the individual is finally

determined to be resident for that year, it shall discharge any assessment made by it, on the income of the individual for that year.

(c) Where a dispute arises between two or more tax authorities or between a tax authority and an individual, with respect to the residence of an individual for a year of assessment, the aggrieved party shall:

- (i) set out all the grounds on which he relies, to refute that determination;
- (ii) refer those grounds, together with the observations thereon by that tax authority, to the Joint Tax Board (JTB);
- (iii) the Secretary to the JTB shall give notice of any grounds, observations or facts referred to by relevant tax authority to those parties, including the individuals who are affected or likely (in his opinion) to be affected, by a determination of residence by the relevant tax authority, and shall afford the parties a period which is not less than forty days, from the issue of the notice, in which to reply thereto;
- (iv) the Secretary to the JTB may call for further information to be given by any party, including an individual, to an objection or dispute, within such time as may appear to him, to be reasonable;
- (v) at the expiration of the period mentioned in (iii) or (iv) above, whichever is the latter, the JTB shall proceed to determine the territory of residence of the individual, for the relevant year of assessment;
- (vi) written notice of a determination by the Board, shall be given by its Secretary, to the individual and to each tax authority affected thereby, and any assessment which has been made on that individual, but not in accordance with the determination of the JTB, shall be discharged.

(d) The tax authority which has referred an objection to the JTB, shall not determine that objection, unless that objection is withdrawn by him, in writing.

(e) A determination of the JTB, shall be binding on all tax authorities and on an Appeal Tribunal, but may be questioned by the individual in the High Court of the territory of the tax authority which has made the relevant assessment.

(f) An appeal from a decision of a High Court, in respect of the territory of residence of an individual, shall lie with the Court of Appeal, and the Supreme Court.

(g) Where a tax authority discovers that an individual, who has been assessed by it to tax, for a year of assessment, is deemed to be resident for that year in the territory of some other tax authority, the assessment shall be discharged and any tax already paid by the individual, in respect of that assessment shall be:

- (i) set-off against tax owing for any other year, by that individual, to the first-mentioned authority; or
- (ii) paid to the Government of that other authority; or
- (iii) repaid to the individual, in such proportions as the first mentioned authority may decide.