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Determining and Changing Tax Residence – the Effects on Individuals

Abstract

The subject of this article is the analysis of reasons and results of determining as well as changing tax residence in the light of Polish personal income tax. This topic underlies a broad concept of migration, especially that of profit-driven character. The author presents this research issue on the basis of the current legislation, doctrine as well as practice of applying the law by the judiciary and the tax authorities. The analysis of the valid regulations of tax law leads to the conclusion that the fiscal situation of migrants is so diversified as well as complicated from the legal point of view that it raises justified practical doubts. It is assumed that tax residence is dynamic and thus may change as a result of both intended and unintended taxpayers' actions which may have specific tax law effects. They are reflected not only in tax preferences but also in obligations concerning tax settlements. Apart from ordinary tax consequences of determining or changing tax residence, the author relates also to particular legal solutions such as: exit tax, taxation of foreign controlled companies or appliance of the provisions of Multilateral Convention (MLI). The described issues are significant for both theory and practice of tax law application.

Keywords: tax residence, resident, non-resident, personal income tax, exit tax, controlled foreign companies, Multilateral Convention (MLI)

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Introductory Remarks

The issue of migration may be considered from many points of view and constitutes a very interesting and rich research area for many sciences.² Undoubtedly, it is also an object of the interest of law, including tax law. Taxpayers' fiscal situation depends on their place of residence, place of stay or their activity which brings economic results. Moreover, tax aspects may be significant for the direction and scale of migration movements. As a result, determining one's tax residence (tax domicile) is necessary as it is crucial for the pragmatics of applying regulations which concern earning foreign income. An analysis of the current provisions of tax law allows one to claim that the fiscal situation of migrating individuals, that is, the ones who change their tax residence, is diversified and so complicated in legal terms that it raises justified practical doubts. One may also notice that the issue of determining and changing tax residence become a reference point for many tax constructions, and for this reason, they deserve substantive considerations.

Premises of Determining Tax Residence

In tax law, the basis is an assumption that the more permanent (intensive) the factual relations of a natural person with a specified state are, the broader the scope of the tax obligation in relation to the income or property of that person is.³ The broadest scope of that obligation – not limited only to one's sources of income in one's country, but also covering worldwide income – is associated with considering that person a resident. A narrower, limited tax obligation, related to non-residents,

² See i.a.: T. Homoncik, K. Pujer, I. Wolańska, *Ekonomiczno-społeczne aspekty migracji. Wybrane problemy*, Wrocław 2017, passim; M. Matkowska, *Współczesne problemy migracji w Polsce*, "Studia i Prace Wydziału Nauk Ekonomicznych i Zarządzania" 2011, 115(24), pp. 89–102; R. Skeldon, *International migration as a tool in development policy: a passing phase?*, "Population and Development Review" 2008, 1, pp. 1–18, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1728-4457.2008.00203.x> (access: 3.09.2019).

³ B.J. Arnold, *Aperçu général des aspects liés à l'application des conventions concernant la double imposition*, [in:] A. Trepelkov, H. Tonino, D. Halka (eds.), *Manuel de l'ONU relatif à certains aspects de l'administration des conventions concernant la double imposition établi à l'intention des pays en développement*, New York 2015, p. 33; M.A. Kane, *A Defense of Source Rules in International Taxation*, "Yale Journal on Regulation" 2015, 32(2), p. 311 ff.

only covers sources of income located in one's country. Such a perspective is adopted in all modern tax systems, though the principles of considering one a resident or non-resident may be determined in various ways on the basis of both the premise of the place of residence or stay or other premises of similar nature. It should be emphasised, however, that the question of citizenship or lack thereof or double citizenship is not decisive in tax law. On the one hand, in the light of Polish provisions, a person who is a foreigner may be considered a resident whose entire (worldwide) income is subject to taxation. On the other hand, no possibility of determining one's residence on the territory of the Republic of Poland even if that person has Polish citizenship, while earning income, results in subjecting that person to the limited tax obligation. The key premise for determining the scope of the tax obligation is thus determining one's tax residence in the light of the provisions of a given state. Moreover, it is worth noting that it is impossible to isolate the term of a legal "EU resident" in income taxes, though it is the criterion of the place of residence in a EU state other than Poland may be significant for gaining certain tax privileges also in the light of the Polish law.

Determining the tax residence which is based on the criterion of the place of residence has a priority meaning for specifying the scope of taxation with the Polish income tax. In the light of the Polish provisions, it is assumed that a natural person who: has the centre of their personal or business interests (centre of their life interests) on the territory of the Republic of Poland or stays on the territory of the Republic of Poland longer than 183 days in a tax year is a person who has their place of residence in Poland.⁴ Therefore, deciding whether and when a migrating person may be considered a resident requires an individual analysis of the premises above. An interpretation of those is seemingly not complicated, however, if one reaches for the extensive work of the judiciary, the stance of the tax authorities, and the doctrine of international tax law, it turns out that in practice, one should take into account a range of facts in order to make a correct interpretation of that provision.⁵

⁴ Article 3 section 1a of the Personal Income Tax Act of 26 July 1991 (*ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych*), consolidated text: Journal of Laws of 2019, item 1387 as amended, hereinafter referred to as the PITA.

⁵ Judgement of the VAC in Olsztyn of 20 September 2018, ref. No. I SA/OI 391/18; judgement of the VAC in Bydgoszcz of 16 January 2018, ref. No. I SA/Bd 983/17; judgement of the VAC in Cracow of 13 July 2016, ref. No. I SA/Kr 1763/15; judgement of the VAC in Warsaw of 20 April 2016, ref. No. III SA/Wa 1562/15; judgement of the SAC of 16 April 2013, ref. No. II FSK 1658/11, CBOSA. See: judgement of the Court of 18 June 2015, in Case C-9/14 *Staatssecretaris van Financiën v. o D. G. Kieback*, SIP LEX 1740353.

The first criterion in which the targeted directive requires considering a taxpayer's situation in the context of their personal or business interests draws particular attention. In the practice of applying law, the analysis of closer personal or economic relations with a given state demands taking the entirety of that person's relationships into account: family and social relationships, employment, political and cultural activity, the place of that person's business activity or the place of disposing one's property, having a bank account, so it requires both the assessment of one's personal relations and the estimation of economic factors.⁶ One should agree with the stance of the judiciary that subjective circumstances in which the taxpayer functions should allow an average observer to conclude that a specified locality is the main centre of a given natural person's activity.⁷ The second premise which is based on the criterion of a taxpayer's stay on the territory of the Republic of Poland in a given year raises significantly fewer doubts. However, here is where there are divergences as to the methodology of calculating that period, too.⁸

It should be emphasised, especially in the context of migration movements, that the resident status is dynamic in nature, and in practice, it may be subject to changes. This way – as a rule – it may be reanalysed every year.⁹ It is also worth mentioning that trips of commercial nature do not have to, but can lead to changing of one's tax residence, especially if they involve moving into another country of the centre of life interests.¹⁰

In the light of tax law, changing tax residence may lead to double tax residence. Such a situation is possible when the residence is determined on the basis of the Polish provisions and the provisions of the other state in which a taxpayer declares their activity which concerns earning income. In consequence, applying the legal

⁶ The practice of the tax authorities and case law presents a very extensive catalogue of facts which may be considered during determining the existence of "the centre of life interests", see i.a.: the judgement of the VAC in Łódź of 5 October 2017, ref. No. I SA/Łd 493/17; judgement of the SAC in Warsaw of 16 April 2013, ref. No. II FSK 1658/11; judgement of the VAC in Rzeszów of 24 November 2016, ref. No. I SA/Rz 798/16, CBOSA; individual interpretation of 16 August 2016, ref. No. IBPB-2-2/4511-587/16-1/JG; individual interpretation of 3 July 2015, ref. No. IPTPB1/4511-270/15-4/ASZ; individual interpretation of 16 January 2015, ref. No. IBPBII/1/415-806/14/MCZ; individual interpretation of 6 June 2014, ref. No. IPPB2/415-212/14-2/MG; individual interpretation of 11 September 2013, ref. No. IPPB1/415-631/13-4/EC, <http://sip.mf.gov.pl/> (access: 27.09.2019).

⁷ Order of the SAC of 16 March 2018, ref. No. I OW 326/17; judgement of the SAC of 11 October 2017, ref. No. II OSK 2082/17, CBOSA.

⁸ See: W. Morawski, *Opodatkowanie dochodów pracy najemnej w świetle umów o unikaniu podwójnego opodatkowania*, "Przeгляд Podatkowy" 2006, 9, p. 12, see: judgement of the VAC in Gorzów Wielkopolski of 19 December 2006 r., ref. No. I SA/Go 74/06, CBOSA.

⁹ Individual interpretation of 23 January 2018, ref. No. 0114-KDIP3-3.4011.552.2017.1.JM, <http://sip.mf.gov.pl> (access: 27.09.2019).

¹⁰ Judgement of the VAC in Warsaw of 8 June 2016, ref. No. III SA/Wa 1671/15, CBOSA.

regulations of both states simultaneously may lead to a so-called conflict of residence in international tax relations, and this state, in turn, leads to international double taxation. According to double taxation conventions which Poland entered into, natural persons cannot have two places of residence. Therefore, there may be only one tax residence, whereas a collision in this regard is settled by means of rules specified in individual double taxation conventions. An analysis of individual premises eliminating a double tax domicile is not possible in this paper, however, the convergence of those premises with the Polish legislation as well as the fact that referring to the taxpayer's citizenship constitutes only one of the steps, which may be considered during the determination of residence in specific circumstances, but it is not the final step, are both worth mentioning.¹¹

A support to the attitude which does not consider one's nationality or citizenship and which was shaped in tax law is a ban on citizenship discrimination; the ban is provided for in the international tax law. The content of the ban indicates that the citizens of one state can be subject to neither taxation nor thereto related obligations in another state, when these obligations are different or more burdensome than taxation and thereto related obligations which the citizens of the other state are or may be subject to in the same circumstances, particularly in relation to the place of residence. The ban also concerns individuals who do not have a place of residence in the states-parties to the agreement.¹² Therefore, relating to the criterion of the place of residence in the Polish tax law results in the fulfilment of the premise pointed out above which indicates "the same circumstances". The diversification of the fiscal situation is possible due to having or not having the tax resident status.¹³

It is worth emphasising here that a taxpayer considered to be a non-resident on the grounds of the Polish provisions is subject to the taxation of only that income which was obtained from sources located in Poland (limited tax obligation). This income includes the one which is related to the professional activity of the taxpayer and the one which is capital and property in nature.¹⁴ It should be emphasised

¹¹ *Modelowa konwencja w sprawie podatku od dochodu i majątku. Wersja skrócona 15 lipca 2014*, Warszawa 2016, p. 103 ff. See: judgement of the VAC in Olsztyn of 20 December 2016, ref. No. I SA/OI 272/16, CBOSA.

¹² See: Article 24 of the OECD Model Tax Convention, *Modelowa konwencja...*, p. 436 ff.

¹³ For more information, see: A. Zalański, *Zakaz dyskryminacji podatkowej w sferze podatków bezpośrednich w prawie podatkowym Wspólnoty Europejskiej*, Warszawa 2006, p. 31 ff.; R. Mason, M.S. Knoll, *What Is Tax Discrimination? "Faculty Scholarship"* 2012, pap. 404, http://scholarship.law.upenn.edu/faculty_scholarship/404 (access: 27.07.2019); R. Lipniewicz, *Zasada niedyskryminacji w międzynarodowym prawie podatkowym*, [in:] B. Mielnik (ed.), *Z problematyki prawa międzynarodowego, europejskiego i krajowego: księga poświęcona pamięci doktora Macieja Lisa*, Wrocław 2018, pp. 109–120.

¹⁴ Article 3 section 2b of the PITA.

that the statutory catalogue of these sources is open, which is indicated by the phrase used: “in particular”.¹⁵ One should state that what is common for and characteristic of the indicated sources of income is their close relationship with the territory of the Republic of Poland, regardless of the place the payment of remuneration or regardless of the place of entering into an agreement and performance.¹⁶

From the formal and legal point of view, a certificate of residence is a document which can confirm one’s tax residence.¹⁷ It certifies the taxpayer’s place of residence for tax purposes, and is issued upon the taxpayer’s request by the responsible tax administration authority of the state where the taxpayer’s place of residence is.¹⁸ The significance of the certificate of residence should be considered in the context of tax benefits resulting from the double taxation conventions.¹⁹ This document conditions compliance with these benefits during the calculation of the tax due according to the Polish Personal Income Tax Act.²⁰ It is worth noting that the Polish tax authorities’ attitude towards the certificate of residence has recently been flexible. Firstly, it was deemed permissible to present the certificate in an electronic form.²¹ Secondly, the tax authorities also accept the taxable persons’ practice of submitting declarations to their payers (ordering parties, employers); it is apparent from those declarations that a foreigner taxpayer’s centre of life interests in a given year is situated in Poland if the taxpayer provides specific data indicating the authenticity

¹⁵ Article 3 section 2b of the PITA. See: judgement of the VAC in Szczecin of 15 February 2018, ref. No. I SA/Sz 1063/17, CBOSA

¹⁶ Judgement of the SAC of 3 October 2018, ref. No. II FSK 2790/16; judgement of the SAC of 25 May 2017, ref. No. II FSK 1043/15; judgement of the VAC in Gdańsk of 4 September 2018, ref. No. I SA/Gd 670/18; judgement of the VAC in Gdańsk of 10 October 2018, ref. No. I SA/Gd 786/18, CBOSA.

¹⁷ Article 5a point 21 of the PITA.

¹⁸ Article 3061 of the Act of 29 August 1997 – Tax Ordinance Act (*ustawa z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa*), consolidated text: Journal of Laws of 2019, item 900 as amended. See: A. Pęczyk-Tofel, M.S. Tofel, *Ograniczenia w wydawaniu certyfikatu rezydencji polskim podatnikom*, “Monitor Podatkowy” 2008, 6, p. 54.

¹⁹ W. Kawa, *Posiadanie przez płatnika certyfikatu rezydencji warunkiem skorzystania z opcji niepobrania podatku u źródła*, “Monitor Podatkowy” 2017, 12, p. 7.

²⁰ See i.a.: Article 29 section 2; 30a section 2; 30b section 3; Article 41 section 9, Article 41 section 9a–9e, Article 41 section 12–14, Article 44f of the PITA.

²¹ Individual interpretation of 7 January 2019, ref. No. 0111-KDIB1-3.4010.603.2018.1.BM, <https://sip.mf.gov.pl/>; see: Ł. Szczygieł, B. Fuchs, *Ważność certyfikatu rezydencji podatkowej w formie elektronicznej w polskim obrocie prawnym*, “Monitor Podatkowy” 2019, 5, p. 52.

of this claim.²² It seems that such an opinion is just and makes it significantly easier for “foreigners” who are residents to settle their income tax.²³

Tax Effects of Tax Residence and Lack Thereof on the Grounds of the Personal Income Tax

The above-indicated determinants of the status of a taxpayer who is a resident or non-resident are essential for the applicable principles of taxing income. This topic is very broad and rich in cases, thus, it seems purposeful to limit the discussion only to signalling essential content.

Since being declared a resident in the light of the Polish tax law, a person is subject to all obligations and makes use of all rights provided for residents. In determining the amount of a tax liability, it is necessary to consider all necessary elements of the structure of the tax, such as determining the amount of revenue,²⁴ tax deductible costs,²⁵ determining the tax basis which is income,²⁶ tax rates,²⁷ as well as tax exemptions²⁸ or tax credits.²⁹ Due to the lack of possibility and purpose of a detailed analysis of all the structural elements of the tax, only those the application of which requires the status of a resident will be signalled below.

Firstly, it is possible for a person who was declared a Polish resident to use two preferential instruments: joint taxation for spouses³⁰ and taxation for single parents,³¹ as one of the conditions which give one the right to use preferences of this kind is the unlimited tax obligation of the taxpayer. Simultaneously, it should be

²² See: individual interpretation of 14 June 2019, ref. No. 0112-KDIL3-1.4011.103.2019.2.AMN; individual interpretation of 19 February 2019, ref. No. 0112-KDIL3-1.4011.457.2018.2.AGR; individual interpretation of 23 January 2019, ref. No. 0113-KDIPT2-2.4011.573.2018.1.AKR; individual interpretation of 22 November 2017, ref. No. 0114-KDIP3-34011.419.2017.JK2; individual interpretation of 12 June 2017, ref. No. 0112-KDIL3-1.4011.64.2017.1.AN. publ. <https://sip.mf.gov.pl/> (access: 27.08.2019).

²³ M. Pogroszewska, *Skarbówka: zagraniczny pracownik nie musi mieć certyfikatu rezydencji*, “Rzeczpospolita” 14.02.2019; eadem: *Rozliczenie podatkowe Ukraińców i Białorusinów*, “Rzeczpospolita” 22.07.2019.

²⁴ Article 12 of the PITA.

²⁵ Article 22 section 2–4 of the PITA.

²⁶ Article 9 in conjunction with Article 26 of the PITA.

²⁷ Article 27 in conjunction with Article 32 of the PITA.

²⁸ Article 21 of the PITA.

²⁹ Articles 26, 27b, 27g 27 f of the PITA.

³⁰ Article 6 section 2 of the PITA.

³¹ Article 6 section 4 of the PITA.

pointed out that under the influence of the case law of the Court of Justice, the use of these preferences was extended to two groups of taxpayers who are not residents, which is key in the situation of changing one's tax residence.³² The first group is spouses (single parents) who have a place of residence for tax purposes in a EU member state other than the Republic of Poland or in another member state of the EEA or in the Swiss Confederation. The other group of the situation concerns spouses one of whom is subject to an unlimited tax obligation in the Republic of Poland, and the other spouse has their place of residence for tax purposes in a EU member state other than the Republic of Poland or in another member state of the EEA or in the Swiss Confederation. In both cases, using these preferences is possible under the condition of obtaining revenue taxable in the Republic of Poland, amounting in total to at least 75% of the total revenue obtained by both spouses in a given tax year, and also under the condition of certifying the place of residence for tax purposes.

Secondly, a person who obtains revenue on the territory of the Republic of Poland may use tax exemptions and credits resulting from the act. Some of these instruments are reserved only for residents. The exemption of a part of the revenue (30% of allowances for a business trip) of those residents who are temporarily abroad and obtain revenue from an employment relationship and related relationships may be given as an example.³³ The exemption of the income of those residents who are temporarily abroad and earn income from: scholarships or allowances for cost of living and accommodation, paid from the state budget in connection with a referral to work as a teacher in schools and academic centres abroad, granted on the basis of separate provisions, has a similar structure.³⁴

On the other hand, the Polish Personal Income Act does not make the right to use tax credits reducing the tax basis or the tax on having residence. Therefore, one may not talk about diversity in the fiscal situation of migrating individuals in this regard. However, the problem lies in the possibility of using the tax credits in situations when there are factual cross-border states in which the migrants bear some expenses in states other than Poland. In such cases, The extension of the possibility of using those preferential structures for the residents of the EU states is particularly significant, even if this concerns bearing expenses outside the terri-

³² See: judgement of the Court of 16 May 2000 in Case C-87/99 Patrick Zurstrassen v. Administration des Contributions Directes, ECLI:EU:C:2000:251; judgement of the Court of 14 September 1999 in Case C-391/97 Frans Gschwind v. Finanzamt Aachen-Aussenstadt ECLI:EU:C:1999:409; judgement of the Court of 25 January 2007 in Case C-329/05 Finanzamt Dinslaken v. Gerold Meindl, ECLI:EU:C:2007:57.

³³ Article 21 section 1 point 20 of the PITA.

³⁴ Article 21 section 1 point 23a of the PITA.

tory of the Republic of Poland. Such preferences should include the possibility of using:

- 1) a deduction of premiums, paid in a given tax year from the taxpayer's resources for the mandatory social insurance of the taxpayer or of persons co-operating with the taxpayer, from the taxable income, according to provisions concerning mandatory social insurance, which are applicable in a EU member state other than the Republic of Poland or in another member state of the European Economic Area or in the Swiss Confederation.³⁵
- 2) a deduction of donations for public benefit purposes specified in a separate act.³⁶ The Act provides for a limit of the deduction amounting to 6% of the yearly income also in the situation of donating money to a public benefit organisation applicable in a EU member state other than the Republic of Poland or in another member state of the European Economic Area, when the organisation engages in public benefit activities in the area of public tasks.³⁷
- 3) a deduction of premiums, paid for medical insurance also in other EU states, and a deduction of a premium paid in a given tax year from the taxpayer's resources for the mandatory medical insurance of the taxpayer or of persons co-operating with the taxpayer, from the taxable income, according to provisions concerning mandatory medical insurance, which are applicable in a EU member state other than the Republic of Poland or in another member state of the European Economic Area or in the Swiss Confederation.³⁸

An exception to the common possibility of applying the tax credits is the peculiar structure of "the return relief", or the so-called abolition relief.³⁹ This concerns only residents who earn foreign income to which, according to the double taxation convention, the imputation method to calculate the yearly local and foreign income tax. When it comes to income from i.a. a remunerated job, the indicated taxpayers have the right to deduct an amount which is the difference between the tax calculated with the imputation method and the tax calculated with a method which is

³⁵ Judgement of the CT of 7 November 2007, ref. No. K 18/06 (Journal of Laws of 2007 No. 211, item 1549). See: Judgement of the Court of 23 January 2014 in Case European Commission v. Kingdom of Belgium, Case No. C-296/12, ECLI:EU:C:2014:24; Judgement of the Court of 6 December 2018 in Case Frank Montag v. Finanzamt Köln-Mitte, Case No. C-480/17, ECLI:EU:C:2019:428.

³⁶ Article 4 of the Act of 24 April 2003 on Public Benefit and Volunteer Work (*ustawa z dnia 24 kwietnia 2003 r. o działalności pożytku publicznego i o wolontariacie*), consolidated text: Journal of Laws of 2019, item 688 as amended.

³⁷ Article 26 section 1 point 9 in conjunction with section 6–6f of the PITA.

³⁸ Article 27b of the PITA.

³⁹ Article 27 g of the PITA.

generally considered more advantageous: the exclusion-with-progression method. This credit is an instrument which strengthens the methods of eliminating double taxation which are applied on the basis of bilateral conventions. This is targeted at counteracting double high taxation.⁴⁰ It should be noted, however, that contrary to the taxpayers' expectations, its purpose is not to lift the tax obligation completely.⁴¹

From the point of view of making the unlimited tax obligation a reality, an essential issue is the realisation of obligations aiming at determining the correct amount of the tax liability.⁴² As for the Polish tax, one should fulfil the obligations separately during the tax year (advance personal income tax payments) and after the year ends (yearly tax settlement). One should also indicate the possibility of choosing one of the simplified forms of taxing income⁴³ (a flat-rate tax on recorded income, a constant amount tax) or a so-called flat tax⁴⁴ by migrating persons who conduct business activity.

In order to avoid double taxation or minimise its effects when the tax has already been paid abroad, only a resident is obligated to calculate the tax by applying special mechanisms called double taxation avoidance methods which result from international double taxation conventions, and also from the Personal Income Tax Act: the imputation method⁴⁵ and the exclusion-with-progression method.⁴⁶ Therefore, paying the tax abroad as a rule does not exempt one from the obligation to settle foreign income in one's country. It should also be mentioned that determining tax residence in Poland is legitimising for the proper application of the double taxation conventions.⁴⁷ In particular, it is essential for the possibility of using privileges resulting from these conventions, i.a. lowered tax rates or tax exemptions concerning individual categories of foreign income.⁴⁸

⁴⁰ Judgement of the VAC in Szczecin of 22 June 2016, ref. No. I SA/Sz 333/16, CBOSA,

⁴¹ Judgement of the SAC of 20 October 2015, ref. No. II FSK 2272/15, CBOSA.

⁴² See: Article 27 section 8 and section 9, Article 30c section 4 and 5, Article 30e section 8, Article 30f, Article 41, Article 44 section 7, Article 45 section 3c of the PITA.

⁴³ See: act of 20 November 1998 on Flat-rate Income Tax on Some of the Revenues Generated by Natural Persons (*ustawa z dnia 20 listopada 1998 r. o zryczałtowanym podatku dochodowym od niektórych przychodów osiągniętych przez osoby fizyczne*), consolidated text: Journal of Laws of 2019, item 43 as amended.

⁴⁴ Article 30 c of the PITA.

⁴⁵ Article 27 section 9 of the PITA.

⁴⁶ Article 27 section 8 of the PITA.

⁴⁷ See: Article 1 and 4 of the OECD Model Tax Convention which Polish double taxation conventions are usually based on.

⁴⁸ See i.a.: Article 10, 11, 12, 15, 18, 20, 21, 23, 24 of the OECD Model Tax Convention.

The Polish Personal Income Tax Act does not provide for a separate regulation of the status of non-residents. In particular, separate tax privileges are not provided for that group. Thanks to the analysis of tax provisions, one may, however, indicate obligations imposed on the non-residents.

A non-resident is subject to a limited tax obligation which results in the obligation to pay only a tax on income earned from sources of income on the territory of the Republic of Poland. It is worth emphasising that the place of the payment of remuneration or the place where the effects of the payer's activity are used are insignificant for determining the location of the source of income. An essential premise which requires determination is only the place of carrying out work or exercising an activity.⁴⁹ The lack of tax residence with the simultaneous application of the principle of territoriality with regard to the income or revenue obtained (a limited tax obligation) is connected with the application of special rules of taxing some revenues and with the necessity of documenting tax residence in another state.⁵⁰

The diversity of the tax status of non-residents, depending on the type of income earned, should also be noted. Three groups of taxpayers may be distinguished here.

The first group may include non-residents who earn their income from work. It may be claimed that as a rule, the obligations of employers and employees do not differ from the obligations realised with regard to residents.⁵¹ A rule of the international tax law is the taxation of income earned by non-residents from employment in a state where their work is carried out. If taxation in the source state (Poland) leads to double taxation, it is eliminated in the native state of residence by applying the appropriate methods of eliminating it which were discussed above.

Separate rules of taxation concern so-called posted workers. The international tax law provides for a waiver of taxation in the source state where work is carried out, with simultaneous giving the right to the exclusive taxation of a posted worker's income only to the state of that worker's residence. This privilege which significantly simplifies tax settlements requires the cumulative fulfilment of three conditions.⁵² The first one concerns the period of posting to work abroad (in Poland) – it may not exceed 183 days in total. Considering this, the period is calculated as days of physical presence in every twelve-month period which begins or ends in a given tax year. The second condition relates to remuneration received by the

⁴⁹ See: B. Głowacka *Dochody uzyskiwane za granicą przez rezydenta Wielkiej Brytanii świadczącego usługi doradcze na rzecz polskiej spółki a obowiązek poboru podatku*, "Doradca Podatnika" 2012, 9, p. 16, LEX 156875/1

⁵⁰ See: Article 29 section 5, Article 30 section 9, Article 30a section 2, Article 30b section 3, Article 41 section 2a, Article 45 section 7a of the PITA.

⁵¹ See: Article 31–35 of the PITA.

⁵² They are generally specified in Article 15 section 2 of double taxation conventions.

worker. It must be paid by the employer or on behalf of the employer, who does not have any place of residence or headquarters in the state in which work is carried out. The third premise concerns a ban on the payment of the remuneration borne by the institution which the employer has in the source state.

The indicated premises are the subject of many doubts frequently resolved in interpretations of tax provisions, and also by the administrative judiciary.⁵³ Such problematic issues include the following questions: overstaying, the issue of deciding whether the employer is a user of labour or an employment agent (the problem of an economic employer), the principles of allowing and engaging in activity in the form of a foreign establishment.

It should be emphasised that not meeting at least one of the indicated conditions results in the source state gains the right to tax income earned from work performed on its territory. Taxpayers-non-residents who earn income from work on the territory of the Republic of Poland on the basis of an employment relationship are obligated to make advance tax payments, after exceeding the period of 183 days. It is very important that in this case, when the first advance tax payment is calculated, a taxpayer is obligated to include income obtained from the beginning of a given tax year.⁵⁴ A non-resident is also obligated to submit a declaration of the amount of income from work, obtained in the year preceding the tax year in three months after exceeding the above-mentioned period, and pay the tax due. If the non-resident intends to leave the territory of the Republic of Poland before 30 April of the following year (before the deadline for filing a yearly tax return), they have the obligation to submit a tax declaration before leaving the territory of the Republic of Poland.⁵⁵

To sum up, it should be claimed that posted workers, despite having the status of a non-resident, after they exceed the period of 183 days, in the light of the Polish Personal Income Tax Act, they are treated as residents – *ex tunc* – retroactively from the beginning of a tax year.

Taxpayers who carry out business may be distinguished as the second group of non-residents. Taxation in the source state is possible only when the said business

⁵³ Judgement of the VAC in Gdańsk of 16 November 2016, ref. No. I SA/Gd 1253/16, CBOSA; judgement of the VAC in Gdańsk of 23 May 2012, ref. No. I SA/Gd 285/12, CBOSA; judgement of the VAC in Cracow of 14 May 2013, ref. No. I SA/Kr 368/13, CBOSA; judgement of the SAC of 18 November 2016, ref. No. II FSK 2822/14, CBOSA; individual interpretation of 5 March 2007, ref. No. DD4-033-01692/ZKK/06/869; individual interpretation of 4 January 2017, ref. No. 1061-IPTPB1.4511.905.2016.2.AP; individual interpretation of 22 December 2016, ref. No. IBPBII/1/415-444/13-1/BD; individual interpretation of 30 November 2016, ref. No. 2461-IBPB-2-2.4511.830.2016.2.AK.

⁵⁴ Article 44 section 3d of the PITA.

⁵⁵ Article 45 section 8 of the PITA.

is carried out through a so-called foreign establishment. The tax provisions consider a permanent establishment, through which an entity which has a place of residence on the territory of one state conducts business activity fully or partially on the territory of another state, to be a foreign establishment. In particular, it is a department, representation, an office, a factory, workshop or a place of extraction of natural resources. A specific establishment is also a construction site, constructions, montage or installations conducted on the territory of one state by an entity which has its place of residence on the territory of another state, as well as a person who acts on behalf and for the entity, which has its place of residence on the territory of one state, on the territory of another state if that person is authorised to enter into agreements on behalf of the entity, and actually exercises that authorisation.⁵⁶ An establishment is an abstract institution of the international tax law.⁵⁷ Determining its functioning makes it possible for the source state to tax the non-resident's income earned on the territory of the source state correctly. The fact that the establishment exists on the territory of the source state does not mean the creation of a new taxpayer. This is because taxation relates to an already existing foreign business (functioning on the territory of the residence state and in accordance with its law), whereas taxation in the source state only covers income earned on from business activity on its territory. The fiscal situation of the establishment does not differ from that of entrepreneurs-residents.

The type of income earned also allows for distinguishing the third group of non-residents. They are taxpayers who earn income from contractual employment. Expats may also be included in this group.⁵⁸ In this case, the tax basis for non-residents is revenue, which means that there is no possibility of deducting costs. As a rule, the tax is withheld by payers who pay remuneration.⁵⁹ The rules of taxation resulting from the Personal Income Tax Act undergo a peculiar correction, according to the provisions of the double taxation conventions, which may provide for significant deviations from the statutory principles e.g. as regards tax rates or tax exemptions. A formal requirement for the application of the conventional privileges is presenting one's certificate of residence. It should be noted that the legal-fiscal situation of taxpayers is not unified in this category, either. Starting from 2019, the amount of payments made from the so-called contractual employment or from capital (interest, dividends) has an impact on the obligations related to tax settle-

⁵⁶ Article 5 of the OECD Model Tax Convention; see: Article 5a point 22 of the PITA.

⁵⁷ For more information, see: R. Lipniewicz, *Podatkowy zakład zagraniczny: koncepcja i funkcjonowanie*, Warszawa 2017, passim.

⁵⁸ See: Article 29 section 1 point 5 of the PITA.

⁵⁹ Article 29 of the PITA.

ment.⁶⁰ If the total amount of payments (allowances) made for the same taxpayer (non-resident) or the total amount of money or monetary values at that person's disposal exceeds PLN 2,000,000 in a tax year, the payer is obligated to withhold the flat-rate tax, applying tax rates resulting from the Act from the amount above the sum of PLN 2,000,000, excluding the tax rate, tax exemption or the conditions for not charging withholding tax, resulting from specific provisions or the double taxation conventions. The taxpayer has analogous obligations if the total amount of payments (allowances) made for the taxpayer or the total amount of money or monetary values at that person's disposal in this regard cannot be determined.⁶¹ These provisions are tightening in nature and though they do not deprive the non-residents of the preferences which the former are entitled to, they make the method of settling the tax more complicated. What is important in this context is the right of a non-resident or their payer to apply for a refund of the tax paid. In this case, it is the tax authority that determines the amount of tax to be refunded on the basis of the tax exemptions or rates resulting from the specific provisions or the double taxation conventions to which the Republic of Poland is a party.⁶² The provisions indicate the mandatory documentation which the applicant should submit to the tax authorities. A valid certificate of residence is its basic element.

One should note the fact that non-residents who obtain revenue from contractual employment do not have any obligation regarding a tax declaration of income earned (losses sustained) in a tax year. This is because all responsibilities related to the settlement of the tax on remuneration paid are the domain of the payer, or the entity which pays the remuneration. In this context, it should be noted that the situation of those residents who, at the same time, are residents of the EU state and the EEA states and the Swiss Confederation is more beneficial. Only these taxpayers, despite their lack of residence in Poland, are entitled to filing a tax return and taxing the indicated amounts of remuneration according to the tax scale, that is, with the full application of tax credits and the deduction of costs. In consequence, the residents of the EU states, the EEA states and Switzerland enjoy full rights to the preferences, on equal terms with Polish residents. In practice, they declare the withheld flat-rate tax in their yearly tax returns, as an advance personal income tax payment. Additionally, the non-residents must attach the certificate of residence

⁶⁰ Article 29 and 30a section 1 point 1–5a of the PITA.

⁶¹ Article 41 section 12–14 of the PITA introduced by the Act of 23 October 2018 on Amending the Personal Income Tax Act, the Corporate Income Tax Act, the Tax Ordinance Act and Certain Other Acts (Journal of Laws of 2018, item 2193).

⁶² Article 44 f of the PITA.

of the state in which they have their place of residence for tax purposes to the declaration submitted.

Specific Consequences of Changing Tax Residence against the Background of International Tendencies

The topic of this paper obliges one to refer to the issue of the specific effects of changing one's tax residence. As mentioned above, this change may be an effect of migration movements of various backgrounds and with diverse geographic directions. The post-1989 migration movements of the Polish, especially Poland's accession to the EU, made the realisation of the treaty's free movement of labour possible.⁶³ Direct impulses to make amendments to the provisions of the tax law was: on the one hand, Poland's accession to the Organisation for Economic Co-operation and Development (OECD),⁶⁴ on the other hand, the implementation of recommendations of the EU bodies,⁶⁵ and considering the broad case-law of the EU.⁶⁶ The above-described effects of regarding or not regarding a taxpayer as a resident constitute standard solutions, as they are based on legal regulations developed by the OECD and accepted by the EU, which result from bilateral double taxation conventions.⁶⁷

⁶³ See i.a.: S. Kudert, *Aspekty podatkowe swobody przepływu pracowników między Niemcami a Polską*, [in:] D. Jajeśniak-Quast (ed.), *Arbeitnehmerfreizügigkeit zwischen Deutschland und Polen Eine Zwischenbilanz aus unterschiedlichen Perspektiven*, Berlin 2014, p. 237 ff.

⁶⁴ Convention on the Organisation for Economic Co-operation and Development, and Supplementary Protocols No. 1 and 2 to the Convention, which constitute its integral part, drawn up in Paris on 14 December 1960 (Journal of Laws of 1998, No. 76, item 490).

⁶⁵ Commission Recommendation (94/79/EC) of 21 December 1993 on the taxation of certain items of income received by non-residents in a Member State other than that in which they are resident (Official Journal of the European Communities L of 1994 No 39/22).

⁶⁶ Judgement of the Court of 14 February 1995 in Case C-279/93, Finanzamt Köln-Altstadt v. Roland Schumacker, ECLI:EU:C:1995:31; judgement of the Court of 11 August 1995 in Case C-80/94, G. H. E. J. Wielockx v. Inspecteur der directe belastingen, ECLI:EU:C:1995:271; judgement of the Court of 21 September 1999 in Case C-307/97 Compagnie de Saint-Gobain, Zweig-niederlassung Deutschland v. Finanzamt Aachen-Innenstadt, ECLI:EU:C:1999:438; judgement of the Court of 12 June 2003 in Case C-234/01 Arnoud Gerritse v. Finanzamt Neukölln-Nord, ECLI:EU:C:2003:340. See: W. Nykiel, A. Zalański (eds.), *Orzecznictwo Trybunału Sprawiedliwości Unii Europejskiej w sprawach podatkowych*, Warszawa 2014, p. 106 ff., B. Hagen, *Schumacker, Comparability – the Conditions of the Schumacker Doctrine*, [in:] K. Dziurdź, Ch. Marchgraber (eds.), *Non-Discrimination in European and Tax Treaty Law*, Vienna 2015, p. 19 ff. See: judgement of the CT of 7 November 2007, ref. No. K 18/06, OTK-A 2007, No. 10, item 122.

⁶⁷ For more information, see: B. Kucia-Guściora, *Międzynarodowe prawo podatkowe*, [in:] P. Smoleń, W. Wójtowicz (eds.), *Prawo podatkowe*, Warszawa 2019, p. 564 ff.

It should be pointed out, however, that recent years brought far-reaching changes to the tax law, which may be called specific legislative solutions, with the issues of using tax residence to optimise taxes.⁶⁸

The first group may include a “new” subject of taxation, which is very strictly connected with changing tax residence. There is no doubt as to the fact that the change of one’s tax residence or transferring individual assets abroad is associated with negative financial (budgetary) consequences for the state of one’s original residence. In this situation, the taxpayer ceases to be subject to the unlimited tax obligation, and in the case of transferring their assets abroad, as the result of such an operation, the state may lose the possibility of taxing those assets later. Legislators face the dilemma of protecting tax claims against the phenomenon of tax evasion, particularly when the taxpayer’s “exit” is typically artificial.⁶⁹ A legal construct which is designed to counteract this type of effects of the emigration of taxpayers or of transferring assets abroad on tax grounds is introducing a specific type of tax – a so-called exit tax⁷⁰ which is called a tax on unrealised capital gains in the Polish act.⁷¹

Two situations are subject to the taxation of income from unrealised capital gains: firstly, transferring an asset outside of the Republic of Poland, as the result of which the Republic of Poland fully or partially loses its right to tax income from the transfer of that asset, with the asset remaining to be the property of the same entity; secondly, changing tax residence by a taxpayer who is subject to the unlimited tax obligation in the Republic of Poland, as the result of which the Republic of Poland fully or partially loses its right to tax income from the transfer of an asset which is the property of that taxpayer, in connection with moving the taxpayer’s place of residence to another state. It is worth indicating that the taxation concerns the totality of rights and duties in a company which is not a legal person, the totality of shares in the company, assets and other securities, derivative financial instruments, and shareholdings in capital funds, called “personal property” if the taxpayer has a place of residence on the territory of the Republic of Poland for a total of at least five years in the period of ten years prior to the day of the change

⁶⁸ See: eadem, *Rezydencja podatkowa w kontekście unikania i uchylania się od opodatkowania*, [in:] D. Gajewski (ed.), *Międzynarodowe unikanie opodatkowania. Wybrane zagadnienia*, Warszawa 2017, p. 127 ff.

⁶⁹ See: A. Nowak-Piechota, *Propozycja wprowadzenia podatku od wyjścia w związku z implementacją Dyrektywy ATAD*, “Monitor Podatkowy” 2018, 7, p. 22 ff.

⁷⁰ For more information, see: A. Nowak-Piechota, *Podatek od wyjścia*, Łódź 2018, passim; K. Suchojad, *Podatek od niezrealizowanych zysków – modelowa koncepcja a rozwiązania polskie*, “Monitor Podatkowy” 2019, 1, p. 27 ff.

⁷¹ Article 30 da of the PITA.

of their tax residence.⁷² Taxation with the tax on income from unrealised capital gains as the result of changing one's tax residence does not concern assets which, after the tax residence has been changed, remain connected with the foreign establishment, located on the territory of the Republic of Poland, of the taxpayer who changed their tax residence. The exit tax does not apply if the total market value of the transferred assets does not exceed PLN 4,000,000. In the case of spouses, this limit concerns both spouses in total, though the market value of the pieces of property covered by the joint property of the spouses is determined for each spouse as half of the market value of these pieces of property.

A surplus of the market value of a piece of property, determined on the day of its transfer or on the day prior to the day of changing one's tax residence, over its tax value, constitutes income from unrealised capital gains.⁷³ The tax basis for the exit tax is the sum of income from unrealised capital gains, which are determined for individual pieces of property. In the case of transferring an enterprise or its organised part, the income from unrealised gains concerns the entire enterprise (its organised part). The tax rate for the taxpayers of the personal income tax is 19% of the tax basis if the tax value of a piece of property is determined; or 3% of the tax basis if the tax value of the piece of property is not determined.⁷⁴

It is worth pointing out that the Act provides for only two exemptions from the exit tax. Firstly, the exemption applies to pieces of property which are donated for public benefit purposes to public benefit organisations which engage in public benefit activities in the area of public tasks and achieve their objectives, on the basis of the provisions applicable in a EU member state other than the Republic of Poland or in another member state of the European Economic Area, when the taxpayer does not have the rights to participate in the profits or the property of the organisation. Secondly, the exemption applies to those pieces of property intended for their official use by the employees, which are directly connected with one's job performed, and do not constitute fixed or current assets as defined in regulations concerning accounting.⁷⁵ The Act also provides for a temporary exclusion from taxation with this tax.⁷⁶

⁷² See: Article 30da section 2–3 of the PITA.

⁷³ Article 30 da section 7 of the PITA.

⁷⁴ The tax value of a piece of property is not determined when, according to separate provisions, tax deductible costs from the paid transfer of that piece of property are not included for income tax purposes – see: Article 30 da section 10 of the PITA.

⁷⁵ Article 30dd of the PITA.

⁷⁶ Article 30dc of the PITA.

The taxpayers of the tax on unrealised gains are obligated to submit a declaration up to the 7th day of the month following the month in which the total market value of the transferred pieces of property exceeded PLN 4,000,000, and to pay the due tax by the same day. If after the month in which the total market value of the transferred pieces of property exceeded PLN 4,000,000, next pieces of property are transferred, the taxpayers are obligated to submit a declaration up to the 7th day of the month following the month in which those pieces are transferred, and to pay the due tax by the same day. It is worth mentioning that the taxpayers may apply for the possibility of paying the tax in instalments, for its refund, when the statutory conditions are met.⁷⁷ In literature, the negative effects of the exit tax are emphasised, not only in the context of new tax burdens, but also of international double taxation.⁷⁸

The second group of legal regulations related to tax residence should include the concept of taxing controlled foreign corporations (CFC), which was introduced in 2015.⁷⁹ This regards taxation, to the extent in which the income of these units is subject to more beneficial in other states, primarily in tax havens.⁸⁰ This solution is to counteract the transfer by taxpayers who are Polish tax residents of their income from specified sources from Poland to dependent units registered in more beneficial tax systems.⁸¹ The taxation of the income of controlled foreign corporations is based on the concept of levying a tax on the income of those companies⁸² on their shareholders who are Polish tax residents (tax rate 19%⁸³) in Poland. The Act determines the specific conditions of the application of the discussed regulations.⁸⁴ In order to eliminate the effect of the double taxation foreign units controlled by the Polish taxpayers, the mechanism of deducting the tax paid by that unit in the state of its residence from the tax due in Poland for the income of the foreign corpo-

⁷⁷ Article 30de, 30df of the PITA.

⁷⁸ A. Nowak-Piechota, *Podatek od wyjścia...*, p. 147 ff.

⁷⁹ The Act introduces the term of a controlled foreign corporation (abbreviated as CFC), see: Article 30f of the PITA.

⁸⁰ Article 30f section 3 point 3 of the PITA.

⁸¹ In the case law of the Polish judiciary, in this context, the possession of units of investment funds, having shares or assets of entities which meet the criteria of being deemed as a controlled foreign corporation, was considered. See: Judgement of the VAC in Bydgoszcz of 14 October 2015, ref. No. I SA/Bd 622/15; judgement of the VAC in Warsaw of 22 September 2016, ref. No. III SA/Wa 1965/15, CBOSA.

⁸² The method of determining the income results from Article 30f section 5–8 of the PITA.

⁸³ Article 30 f section 1 of the PITA.

⁸⁴ Article 30f section 12 of the PITA.

ration applies.⁸⁵ As a result, the size of the tax burden corresponds to the difference between the Polish income tax and the income tax paid by the controlled foreign corporation in the state of its residence. The application of provisions regarding CFC raises doubts both against the background of the application of double taxation conventions,⁸⁶ as well as the EU law,⁸⁷ however, one should consider the indicated tax construct, while planning cross-border actions.

Finally, the third very important issue associated with the tax residence is the impact of the provisions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, drawn up in Paris on 24 November 2016⁸⁸ on the taxation of cross-border income. This paper does not allow for a broad reference to this act,⁸⁹ however, some essential aspects are worth mentioning.

Firstly, it should be pointed out that an innovative mechanism was used in the MLI Convention, which allows for making simultaneous changes to many double taxation conventions. This modification occurs under the law, not under amendments made to independent bilateral treaties. Therefore, making an assessment of the impact of the MLI on the status of a resident or non-resident, one should interpret the applicable double taxation conventions simultaneously with the provisions of the MLI Convention. This is a serious difficulty for the already complicated process of interpreting law because in a specific factual state, it will be necessary to make parallel references to two international conventions – both the bilateral one and the multilateral one.

Secondly, the impact of the MLI Convention on Polish conventions depends not only on the content of the MLI itself, but also on the position of Poland and other states-signatories and possible further modifications, as well as on the schedule of

⁸⁵ Article 30f section 13 of the PITA.

⁸⁶ F. Majdowski, *Stosowanie regulacji CFC w kontekście umów o unikaniu podwójnego opodatkowania – ocena stanowiska OECD*, "Monitor Podatkowy" 2016, 9, p. 11 ff.; idem, *Stosowanie regulacji CFC w kontekście umów o unikaniu podwójnego opodatkowania – stanowisko judykatury w wybranych państwach, cz. 2*, "Monitor Podatkowy" 2017, 3, p. 14 ff.

⁸⁷ Idem, *Czy stosowanie regulacji CFC stoi w sprzeczności z postanowieniami Dyrektywy o spółkach matkach i spółkach córkach?*, "Monitor Podatkowy" 2018, 6, p. 11 ff.

⁸⁸ Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, drawn up in Paris on 24 November 2016 (Journal of Laws of 2018 item 1369), hereinafter referred to as: the MLI Convention.

⁸⁹ For more information, see: D. Kleist, *The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS—Some Thoughts on Complexity and Uncertainty*, "Nordic Tax Journal" 2018, 1, pp. 31–48; B. Bacia, P. Toporowski, *Instrument wielostronny MLI – nowa era w międzynarodowym prawie podatkowym*, "Przegląd Prawno-Ekonomiczny" 2018, 1, p. 156 ff.; A. Franczak, *Konwencja Wielostronna (MLI) – podatkowa ewolucja czy rewolucja?*, "Studia Iuridica Lublinensia" 2018, 2, http://journals.umcs.pl/sil/article/view/6629/pdf_1 (access: 24.07.2019).

ratification processes in individual states. The final shape of the impact of the MLI Convention on tax conventions is dependent on the stance developed by each of the signatories. The main feature of the MLI Convention that is flexibility was achieved thanks to the possibility of applying a diversified system of shaping versions by submitting claims, notifications, a choice of alternative or facultative options, or declarations by the states.

From the perspective of this paper, one should point out the far-reaching effects of the MLI Convention, particularly for the residents. One should consider the replacement of the exclusion-with-progression method by the imputation (tax credit) method – a process which is to occur in selected bilateral conventions – to be one of the most essential changes brought by the Multilateral Convention to tax conventions.⁹⁰ The motive for the reversal of the tendency to use the exclusion-with-progression method, which was quite common in the Polish conventions, was the diagnosed practice of abusing the conventions which even led to the double non-taxation of income, in connection with using tax exemptions in the source state under local provisions. It should be indicated that changing the method of double taxation avoidance will in effect lead to abandoning the construct of the tax exemption applied as part of the exclusion method, in favour of covering worldwide income with the tax obligation in the residence state, with the taxpayer retaining their right to deduct the tax paid in the source state. Of all three options, permitted by the MLI, which limit or exclude the application of the exclusion-with-progression method, Poland chose the C option, that is, a total replacement of the exclusion method by the imputation method. Poland claimed such an intention for 77 of 78 conventions notified by Poland for covering by the Convention. In spite of the notification of 77 conventions, the C option will only apply to 19 of them,⁹¹ which results not only from not signing the Convention by the parties of some submitted agreements or not notifying agreements with Poland by them, but also from the clause of the non-application of Article 5 to the notified agreements at all, which was quite frequently chosen by the parties of the MLI Convention, or the clause of the inefficiency of choosing the C option.

The basic effect which one should reckon with after the change of the methods is the obligation of revealing and settling foreign income in the residence state, regardless of whether the taxpayer earned local income. Therefore, the method of

⁹⁰ Article 5 of the MLI Convention.

⁹¹ Due to the practical dimension of the discussed changes, the agreements in which the replacement of the double taxation avoidance method will occur are worth mentioning here. They concern the following states-parties: Austria, Belgium, China, Finland, Greece, Spain, Ireland, Israel, Japan, Lithuania, Mexico, Norway, New Zealand, Portugal, Romania, Slovakia, Slovenia, Great Britain, Italy.

proportional imputation provides a much fuller control for the tax authorities over the residents' income earned abroad. However, as for the taxpayers, this is not only less beneficial financially, but it is also significantly more complicated technically. Moreover, from the practical point of view, questions are raised about the relationships between changing the method of double taxation avoidance and the acceptability of applying internal provisions, e.g. of the abolition relief.⁹² It is particularly since the structure of the credit does not cover all types of income, and only the categories of the sources of foreign income, which are named *expressis verbis*. It is also emphasised that apart from a possible increase of tax burdens, the change of the method of double taxation avoidance may translate into an increase of administrative burdens, as well as provoke the taxpayers into changing their tax domicile.

Concluding Remarks

The issue of determining and changing the tax residence, which was outlined above, is essential theoretically, as well as practically. The main objective which should be adopted is the fact that the tax residence is dynamic in nature, which means that it is not a permanent and fixed factor. It may be subject to changes, as the result of an intentional or unintentional action of taxpayers which produces specified legal-tax effects. Thus, it seems justified to claim that the tax residence cannot be deemed as a factor which is assumed a priori, on the contrary – it requires an individual analysis of the life and economic situation of a taxpayer.

It should be noted that determining the tax residence involves essential tax effects, as the taxpayer is subject to taxation in an unlimited way, regardless of the place of earning the income. This is expressed in both the possibility of using tax preferences, and the necessity of fulfilling a range of instrumental obligations regarding tax settlements. It should be emphasised, however, that it is not always that the change of one's tax residence causes the loss of or limitations in the application of tax privileges or extending tax obligations. This is, however, an essential premise in determining the taxpayers' rights. Therefore, it cannot be omitted or underestimated, and its correct interpretation seems to be of key importance in the light of the constantly changing provisions of the tax law.

It seems justified to claim that changing one's tax residence may produce usual and specific results. The latter result from the evolution of the provisions of the tax law in recent years and are targeted at tightening the tax system. It may thus be claimed that complete freedom and migration dynamism finds its far-reaching

⁹² Article 27 g of the PITA.

consequences on the grounds of the tax law, which was signalled by the above outline of new tax instruments, such as the tax on unrealised gains, the taxation of controlled foreign corporations, or the application of the provisions of the MLI Convention.

The importance of the tax residence should thus be noticed and analysed in the above context, as a factor influencing the scope of taxing personal income locally and internationally. One should hope that this topic will be expanded theoretically against the practical challenges of the modern tax law.