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MAIN DIRECTIONS OF CONSULTING ACTIVITIES IN THE FIELD OF PERSONAL INCOME TAXATION AND AVOIDANCE OF DOUBLE TAXATION

The article gives the reasons for its occurrence, structures the process of obtaining income outside the tax environment of Ukraine. Types of income and rates are described, definition of tax resident status is provided. The main provisions of international agreements, which taxpayers need to pay attention to, are presented, namely, types of activities and income, a list of taxes, their rates, and the presence of special conditions for their application. An important aspect of the study is the criteria for determining residency, including the period of residence in the country, the center of vital interests, business registration, and real estate acquisition. The article also provides an example of salary taxation by a resident of Ukraine, provided such income is generated in Lithuania, tax rates are given, the amount of taxes is calculated, and the process of crediting taxes withheld by a tax agent, declaring income, and paying the tax difference is detailed. The article also structures the process of declaring income received abroad, defines the sphere of professional interests of the consultant. Consultants for the specified type of activity can provide general consultations, check the reporting prepared by the taxpayer and provide a full range of services, which includes the calculation of the amount of income, the preparation of a tax declaration on property and income and further support, correspondence with the State Tax Service of Ukraine.

Keywords: Tax residence, tax resident, double taxation, center of vital interests, tax agent, consulting, income declaration.

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ОСНОВНІ НАПРЯМИ КОНСАЛТИНГОВОЇ ДІЯЛЬНОСТІ У СФЕРІ ОПОДАТКУВАННЯ ОСОБИСТИХ ДОХОДІВ ТА УНИКНЕННЯ ПОДВІЙНОГО ОПОДАТКУВАННЯ

У статті наведено причини виникнення, структуровано процес отримання доходів за межами податкового середовища України. Описано види доходів, ставки, подано визначення статусу податкового резидента. Подано основні положення міжнародних угод, на які платникам податків необхідно звернути увагу, а саме види діяльності та доходів, перелік податків, їх ставки та наявність особливих умов їх застосування. Важливим аспектом дослідження є критерії визначення резидентства. Серед них період проживання в країні, центр життєвих інтересів, реєстрація бізнесу, придбання нерухомості. У статті також наведено приклад оподаткування заробітної плати резидентом України за умови виникнення такого доходу у Литві, наведено ставки податків, розраховано розмір податків та деталізовано процес зарахування податків, утриманим податковим агентом, декларування доходів та сплату податкової різниці. Також у статті структуровано процес декларування доходів, отриманих за кордоном, визначено сферу професійних інтересів консультанта. Консультанти за вказаним видом діяльності можуть надавати загальні консультації, перевірити складену платником податку звітність та надати повний обсяг послуг, що включає в себе розрахунок суми доходу, складання податкової декларації про майновий стан та доходи та подальший супровід, переписку із Державною податковою службою України.

Ключові слова: Податкове резидентство, податковий резидент, подвійне оподаткування, центр життєвих інтересів, податковий агент, консалтинг, декларування доходів.

Problem statement and its significance. The rapid development of the world globalization of the economy, as well as the full-scale invasion, actualized the international agreements signed by Ukraine on cooperation in tax matters. The norms of tax legislation, including when determining the signs of tax residence, must be clearly observed, taxpayers have the right to avoid double taxation and must clearly understand the basis, rates and scope of the taxpayer's obligations when receiving income. It is in this area that we see the prospect of research and application of the processed information in consulting.

The aim of the study. Nowadays there are 71 international bilateral conventions (agreements) on the avoidance of double taxation between Ukraine and other states. Therefore, we consider it is necessary to determine the main, universal provisions of the specified documents, which taxpayers, accountants and consultants should pay attention to in their work, to work out their practical application, and to clearly define the consultant's field of activity in this process.

Analysis of recent research and articles The actual problems of applying the features of tax residency were studied by such scientists as I.I. Kucherov, O.S. Hrachov, I.E. Krynytskyi, Y.G. Kozak, O.V. Shcherbakov, I.M. Bondarenko, S.G. Pepeliaev and others. However, the research data do not exhaust the identified issues and require further research. It is interesting to consider practical cases of the application of legislation in the indicated direction in the context of receipt and taxation of income by a resident of one country in another.

The convention clearly defines the types of activities and incomes, as well as the list and rates of taxes, the payment of which in one state is recognized by another. Such an agreement was signed between Ukraine and Lithuania in 1996.

Those who use the Convention to tax their income are called global citizens. Global citizens are individuals who reside and/or receive income from various sources abroad. It is clear that with the beginning

of the full-scale war, the number of global Ukrainians increased dramatically. I think that with the accession of Lithuania to the EU and the Schengen zone, we can talk about global Lithuanians. They are the potential clients for a personal income tax and accounting consultant [6, 7, 8].

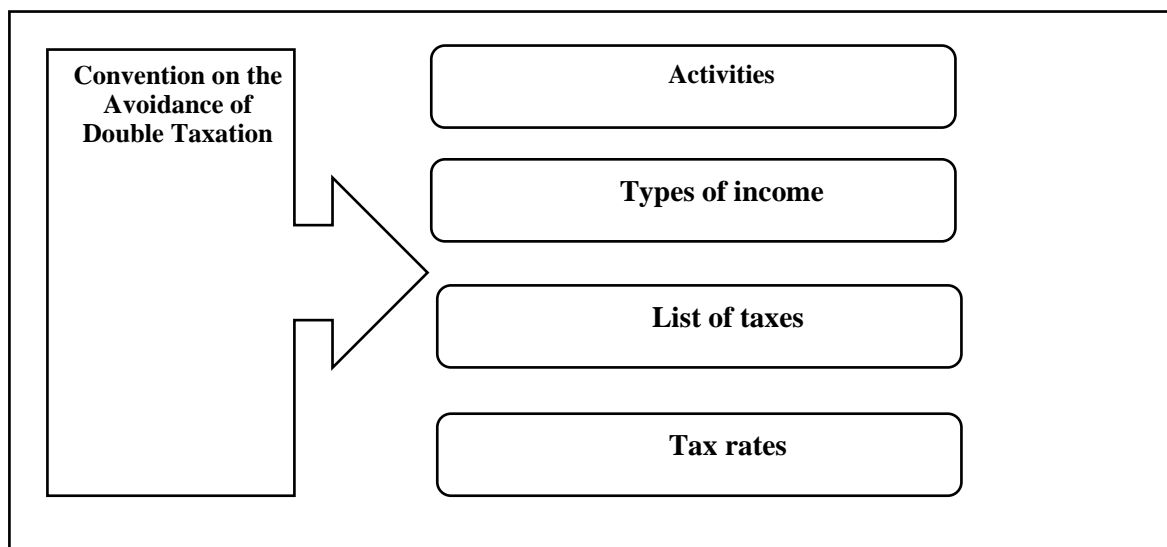


Fig.1. The main universal provisions of the Conventions for the Elimination of Double Taxation
 Source: [1, 2]

In this regard, you and I must define for ourselves what tax residency is and the avoidance of double taxation. A tax resident is a person who, according to the legislation of a certain country, is subject to taxation in it based on the place of residence, permanent residence, place of registration or other similar criterion. Tax residency is a feature that indicates the closest possible contact of a person with the country to which they pay taxes.

Tax residency is a broader concept than it seems at first glance. It's not just about income, expenses and taxes. Factors that are not directly related to taxes, but have a large impact on taxation, are also taken into account. Each country has its own legislation on determining the status of a tax resident. General rule for everyone: The longer you live in another country, the more rights it will have over you as a tax resident. In Germany, for example, the existence of a lease agreement for permanent residence is a key feature for determining the status of a tax resident in this country. Let's consider the key factors for determining tax residency and compare them. A cursory study of information about several European countries allowed me to identify two groups of criteria. The first is the term of stay. The second is the center of vital interests. The third may be some special condition. In Ukraine, for example, if a global Ukrainian is an individual entrepreneur, they will not be able to change their tax residency. Actually, that is why Ukrainian accountants and consultants have so many requests for the official termination of business activities.

Table 1

Criteria for determining tax residency in Ukraine and Lithuania

| UKRAINE | LITHUANIA |
|---|---|
| 1. Residence in the country for more than 183 days during the calendar year | 1. Residence during 183 days of one tax period or 280 days during consecutive tax periods |
| 2. The location of the center of vital interests on the territory of Ukraine. 3. The fact of registration as a self-employed person. | 2. Location of the center of vital interests. |

So, as we can see, the criteria for determining residency in Ukraine and Lithuania are similar. Both you and us have a priority based on the center of vital interests. Let's try to understand using specific examples.

The spouses are citizens of Lithuania, who officially work in Ukraine, where they stay for a long period (more than 183 days). They also own real estate in Lithuania, their children and parents also live in Lithuania. Will Ukraine apply for tax residency? No, it won't. Because the center of vital interests has not changed. Another question: if in this example we switch Lithuania and Ukraine? Will Lithuania be defined as a tax resident? Not either. And the center of vital interests will also have priority.

However, in both the first and second cases, the country of employment claims to pay taxes on wages to its budget. About that a little later.

Let's add a third country, for example France. Our super-global couple are citizens of Lithuania, work in Ukraine, but children and parents live in their own house in France? What do you think? To find out the answer to this question, we need to check whether French tax law also defines the center of vital interests as priority. If it determines - they are tax residents of France.

So, when making a consultation plan, we need to find out which countries we will be talking about.

Is there a possibility of changing tax residency?

Next, we need to answer the following questions:

- How exactly are incomes recognized by the country of origin and the country of residence?
- How to avoid double taxation. How to legalize taxes paid abroad?

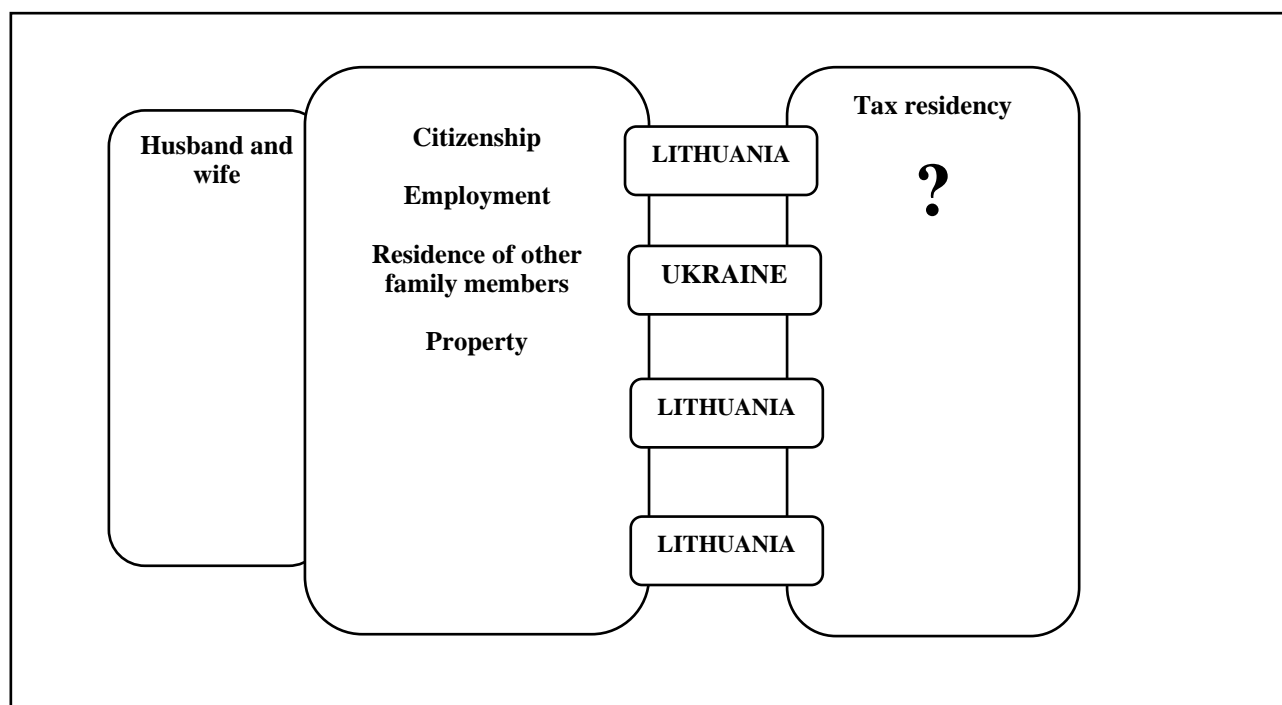


Fig.2. Scheme for determining tax residence by main criteria and countries

Compiled by the authors

Consider the example of a resident of Ukraine receiving a salary in Lithuania. Payment of taxes will undoubtedly be made to the budget of the country of origin. The employer will withhold income tax from their salary and pay it to the budget of Lithuania at 15%. If the salary is 30,000 euros, then 25,500 euros will remain to be paid. Convention on the right to avoid double taxation has been signed between Ukraine and Lithuania. Therefore, when declaring, a tax resident of Ukraine has the right to credit the taxes paid. In Ukraine, the rate of a similar tax is 18%, plus we have a special tax introduced after the start of the war in 2014 - the military tax. Question: if the taxpayer uses the right guaranteed by the Convention, what obligation will arise in Ukraine? (True. The difference of 3% and 1.5%, which were not paid in Lithuania)

Let's consider the opposite situation. That is, the tax in Lithuania is 18%, and in Ukraine it is 15%? Is taxpayer entitled to reimbursement from the budget for the difference? Taxes paid outside the tax environment of the country of residence are not refunded.

Dividends and profits from the sale of investment assets obtained abroad are no less popular income for global citizens. Will taxes paid be credited in the same way? Yes of course.

After we have covered the main aspects of the topic, we finally need to find out the area of professional interests of the consultant. To begin with, I suggest you look at the diagram.

All income of individuals is divided into income received in the country of citizenship and in other countries. Everything is clear with the first ones. First of all, this is a salary, possibly funds from the sale of real estate, cars, inheritance. Also investment income and dividends received from Ukrainian issuers. The tax agent will withhold and pay all taxes [3,4].

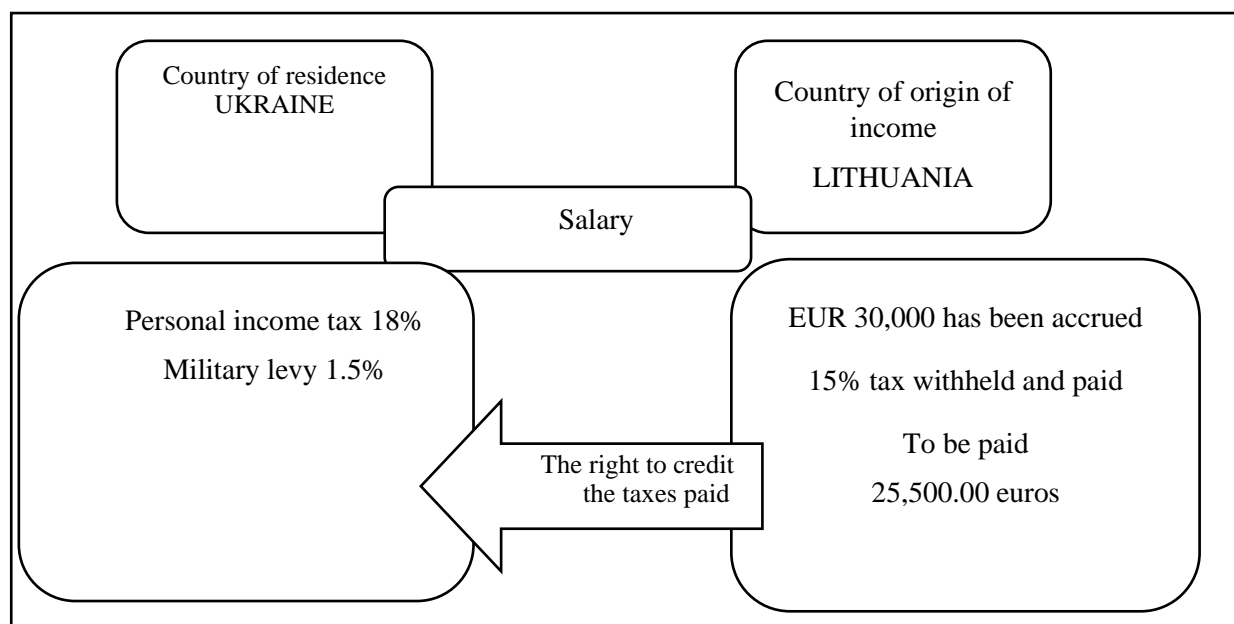


Fig.3. Scheme for determining tax residence by main criteria and countries
Compiled by the authors

A tax agent is a person on whom the Tax Code imposes the duty to calculate, withhold from income accrued (paid, provided) to the taxpayer, and transfer taxes to the relevant budget on behalf of and *at the expense of the taxpayer's funds*.

It is more interesting with income received abroad. Most often, these are wages, investment income, dividends, income from shares in foreign companies.

What services can an accountant and consultant provide in this area?

- general consultation (main aspects of declaration, answers to questions, preliminary calculation of the actual tax liability)
- preparation of reports or verification of reports prepared by the client (it is necessary to check the presence of errors in the filling, the reporting structure, etc.);
- further support (assistance in correspondence with the tax service, preparation of documents confirming the occurrence of income and payment of taxes);

When taxpayer declare a right to avoid double taxation, he need to be prepared to document the payment of such taxes in the country of origin. The list of such documents is usually determined by tax legislation.

Confirmation of the amount of paid income can be recognized in two ways. The first is by providing a certificate from the tax service, which must indicate the object, the tax base, and the tax amount. The certificate can be requested in paper form, translated into the state language. The second is easier. Taxpayers provide the documents they have. Bank statement, employer's certificate, brokerage account statement if it is about investment income. Ukraine recognizes only the first option. I advise tax residents to obtain such a certificate in advance, because it is a long process. In Lithuania - the second option.

The consultant can advise the taxpayer to immediately add all documents to the declaration. The report form requires the attachment of PDF files. And you can wait for an official letter from the tax service. Such correspondence can be long. The taxpayer, with consultant's assistance, can exchange documents several times. Especially since in European countries the verification period is 5 years [6,7].

If the volume of income is small, tax consultant advises clients not to use the right to avoid double taxation. If it is possible to save money on the payment of taxes, we indicate the amount of taxes paid abroad in the declaration and prepare documents for confirmation.

In order to prepare a consultation plan, we will define a list of the main questions to which consultant need to get the client's answer:

- what countries are we talking about?
- is there a signed convention on avoidance of double taxation?
- are there any doubts about the change of tax residency?
- what types of income are subject to consultation?
- what are the prospects for cooperation?

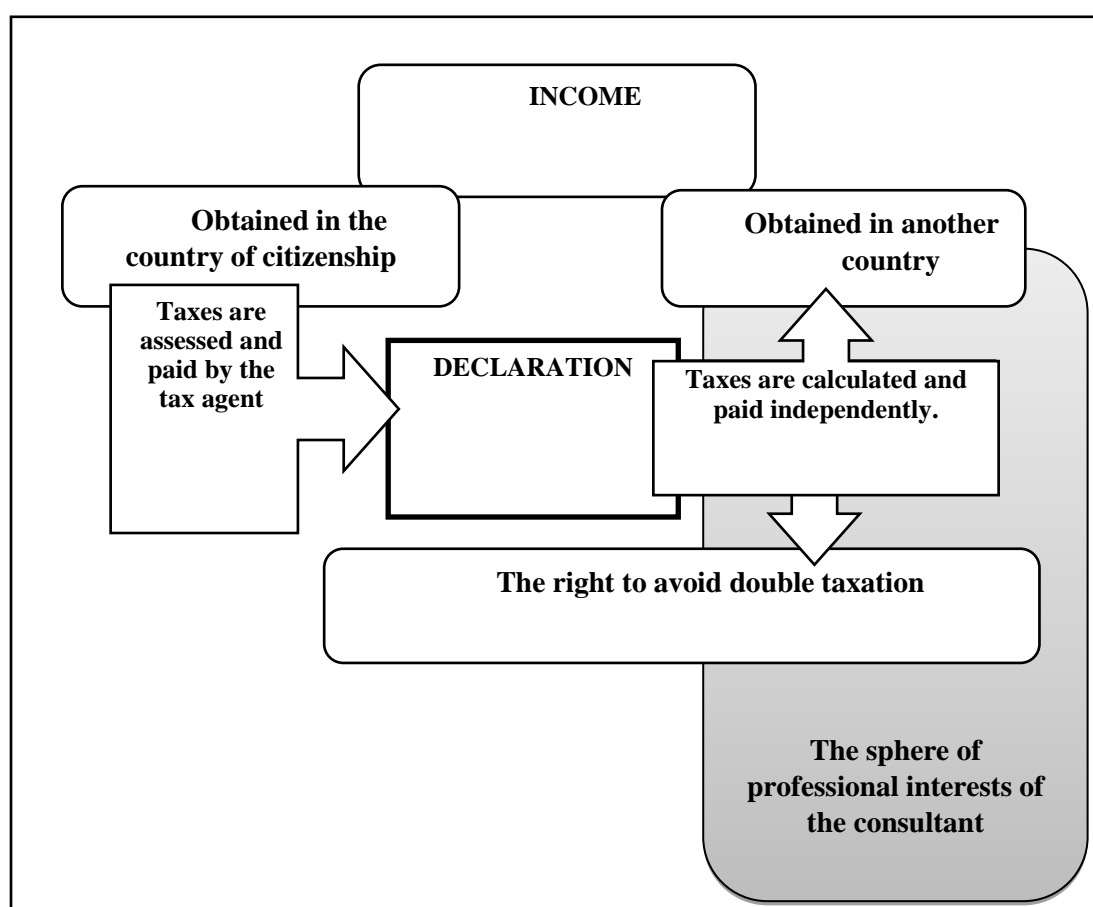


Fig.4. A schematic representation of the process of declaring income and determining the scope of professional interests of a consultant
Compiled by the authors

Conclusion. The disadvantages of consulting in this area is inability to study and perfectly know the legislation of all countries, therefore it is impossible to become a universal consultant in this field. Moreover, there are no absolutely precise rules here. There is a rule and several special conditions to it. But that doesn't mean we should avoid this area of counseling. We can expand knowledge about the taxation of the most attractive countries. But it is a very perspective topic for counseling. The consultant can choose a

narrower area of interest. For example, to help taxpayers choose the most beneficial country for tax residency, of course, among the countries whose tax legislation consultant familiar with. If consultant knows the client's sources of income, tax conditions and tax rates, he can predict the future tax burden.

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