

Notion of tax residence - Natural person - Luxembourg law

A natural person is considered a resident taxpayer if the individual's tax residence or usual place of living is in the Grand Duchy of Luxembourg (Luxembourg)¹;

Tax residence²

A natural person has her tax residence in the place where he/she owns a home in a context allowing to conclude that he/she will keep it and use it.

Comments:

- ⇒ Real home
- ⇒ Place of residence as owner, tenant, usufructuary
- ⇒ Home sufficiently fitted and furnished in accordance with the taxpayer's situation
- ⇒ Analysis of all facts

Usual place of residence³

A natural person has her usual place of residence at the place where he/she actually lives in circumstances showing that he/she is not staying in this city or country on a temporary base.

Comments:

- ⇒ A stay exceeding 6 months in Luxembourg characterises a usual place of residence, calculated retroactively from the day of arrival in the country
- ⇒ Cross-border commuters cannot be considered as having their usual place of residence in Luxembourg;

Regardless of the individual's address, a natural person is in principle considered as a non-resident taxpayer in Luxembourg if the individual's centre of vital interests is situated abroad, outside Luxembourg.

¹ Art. 2 of the law of 4 December 1967 concerning income tax (version of 1 January 2015)

² Ref. Art. 13 of the law of 16 October 1934 concerning tax adjustment (Steueranpassungs-Gesetz)

³ Ref. Art. 14 of the law of 16 October 1934 concerning tax adjustment (Steueranpassungs-Gesetz)

Notion of tax residence - Natural person - Conflict of residences

When a natural person may be considered as a resident of two States, the individual's situation is determined as follows in the OECD Model Tax Convention on Income and Capital:

a) The individual shall be deemed to be a resident only in the State in which the individual has a permanent place of residence available; if the individual has a permanent place of residence available in both States, the individual shall be deemed to be a resident only in the State with which the individual has the closest personal and economic relations (centre of vital interests);

b) If the State in which the individual centre of vital interests is situated cannot be determined, or if there is no permanent place of stay available to the individual in either State, the individual shall be deemed to be a resident only of the State in which the individual has his/her usual place of residence;

c) If the individual has a usual place of residence in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;

d) If the individual 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.

This way to solve situations where a natural person is tax resident in two different States has been chosen in several bilateral conventions, in particular in the agreements between **Luxembourg and Belgium** and between **Luxembourg and Germany**.

As regards the **France-Luxembourg**⁴ situation, *the tax residence of natural persons is the normal place of residence, understood as the permanent home or, failing that, the main place of residence.*

Examples

- **A, a French national who lives in Luxembourg and whose only income is a Luxembourg wage.**

A should be considered as a tax resident in Luxembourg, and not in France. The same solution would be adopted in the case of a Belgian or German national working and living in the Grand Duchy.

- **B lives in France and commutes to Luxembourg every day to work and his/her only income is a Luxembourg wage.**

Even though this individual works in Luxembourg, the individual's permanent home is in

⁴ See paragraph 4 of article 2 of the agreement signed by Luxembourg and France and ratified by Luxembourg law on 17 August 1959.

France and his/her tax residence should, consequently, be in France. This solution should normally apply in the same circumstances to a Belgian or German cross-border commuter.

- **C stays the entire week in Luxembourg to work, but returns to Germany each weekend to the house where his/her family lives.**

This individual should be considered as a tax resident in Germany, given the fact that the individual's family lives in this State.

This solution should apply to French or Belgian residents who work and live in Luxembourg during the week, and who return to the place of residence of their families at the end of the week.

Notion of tax residence for legal entities

A legal entity is considered as a resident taxpayer if its statutory head office or its central administration is located in the Grand Duchy of Luxembourg.

Example

The headquarters of company A is located in Luxembourg, but the meetings of the board of directors take place in France. In such a case, the company should be considered as a tax resident in France. An identical solution should apply in the same circumstances to a company that is managed from Germany or Belgium.

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