

Guideline

Tax Information Material for Guest Scientists at the Leipzig University

Welcome Centre



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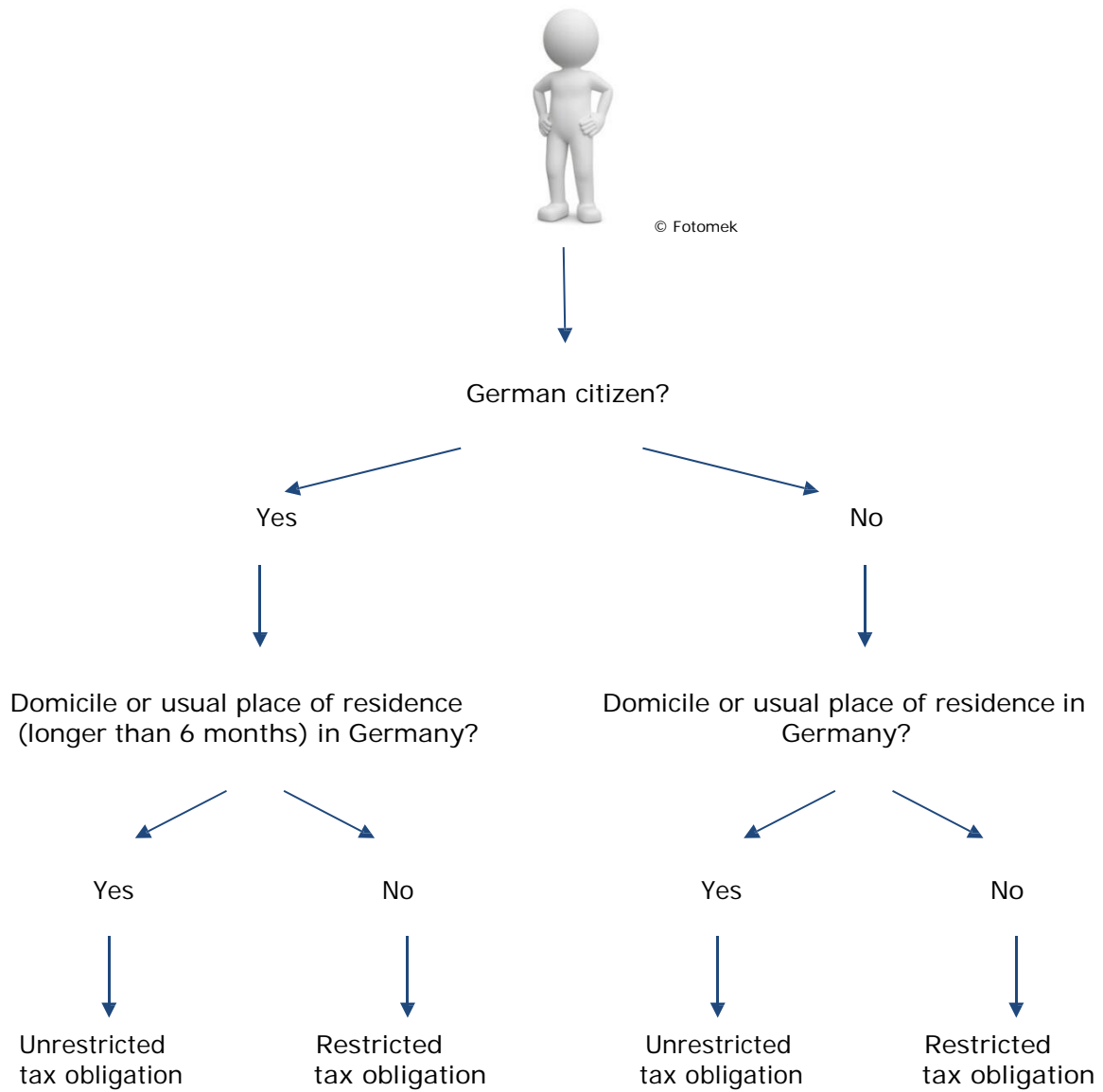
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I. Overview



II. Tax Obligation in Germany

The establishment of a tax obligation in Germany can be determined in different ways. In order to classify an individual case precisely, however, it is essential for the specific factual circumstances to be analyzed, and to determine to which tax obligation the individual person and their activity in Germany is to be allocated.

On this basis, first the individual features of the respective forms of tax obligation will be presented, and then these will be illustrated by way of an example.

1. Unrestricted Tax Obligation

In principle, an unrestricted tax obligation pertains in Germany for all those persons who have established their domicile or usual place of residence in Germany. A domicile or usual place of residence is deemed to be established if it can be recognized from the circumstances that the person concerned is in long-term possession of a place of residence, or is staying at a location not only temporarily, i.e. is staying in Germany for longer than 6 months. If only one of these features is fulfilled, it can be assumed that this person has established an unrestricted tax obligation in Germany, and can be taxed on their entire income (world income) in Germany.

Example:

Andrew studied history in Atlanta (USA) and took a post-graduate degree. After completing his doctorate, he obtained a post in Berlin as from January 2017 at the university there with an employment contract subject to a time limit of 3 years. For his new position Andrew initially rented a small furnished one-room apartment in Berlin.

The question now arises as to whether Andrew, in the view of the tax administration in Germany, has established an unrestricted or restricted tax obligation. Andrew has rented a small apartment on the basis of his appointment in Berlin. Because he has availed himself of this apartment, he has therefore established a domicile in Germany. Even if this apartment is intended initially to serve only as a place to live, with regard to an unrestricted tax obligation in the first instance it is to be assumed that the presence of a domicile does pertain. Moreover, the duration of his employment contract, for 3 years, is an indicator that Andrew will be staying in Germany not only temporarily, but rather that his usual residence will clearly exceed the limit of 6 months. Andrew will therefore, as from April 2017, be subject to an unrestricted tax obligation in Germany.

2. Restricted Tax Obligation

An alternative to the unrestricted tax obligation is the restricted tax obligation in Germany. Being subject to restricted tax obligation means that the person concerned does not, in the first instance, establish any long-term domicile in Germany, and also does not remain in residence in Germany for a period of more than 6 months. This person, however, does receive an income in Germany from an activity, whether independent or not independent, has income from a commercial undertaking or from the agriculture and forestry sector, obtains income from capital, or has some other sources of income from Germany.

Example:

Ricarda is a scientific employee at the University of Rio de Janeiro. On the basis of her extensive studies in the context of her doctoral thesis, she is invited to undertake a series of lectures for a period of 5 months as a guest post-graduate at the Institute of Agrarian Science in Regensburg. Ricarda will be engaged by the University from January to the end of May. For the period of her stay, Ricarda will be visiting her friend Ronja, who lives in Regensburg, and whom she knows from the time of her studying in Rio de Janeiro. Since Ronja has a large apartment, Ricarda can stay with her in the guest room for the time of her stay.

The question now arises as to whether Ricarda is subject to an unrestricted or restricted tax obligation for the period of her engagement at the University in Regensburg.

As has already been indicated, it is an important factor for the unrestricted tax obligation that Ricarda establishes a domicile or her usual place of residence in Germany. Ricarda is living with her friend, and has not herself rented an apartment in which she would establish a fixed domicile. She is simply a guest in the apartment of her friend Ronja, and therefore does not maintain her own domicile in Germany. On this basis, it must then be considered, as a next step, whether Ricarda has at least a temporary usual place of residence in Germany. Ricarda's activity is restricted to the period of the lecture series, and extends over 5 months. The limit period for usual residence, however, is set at a period of residence of 6 months. Ricarda is not exceeding this limit. She is therefore not resident in Germany, and she is therefore subject to a restricted tax obligation.

The implementation of the tax procedure, the inclusion of income from abroad, and the application of existing double taxation treaties are regulated differently in cases of unrestricted and restricted tax obligations. As a result, a differentiated consideration of both cases will be provided on the following pages.

III. Unrestricted Tax Obligation

1. How will the tax procedure be carried out?

If an unrestricted tax obligation pertains, then the payment is already put into effect by the employer, by the corresponding retention of tax from the employee's remuneration.

In the case of Andrew, on the basis of his appointment at the university in Berlin he receives a remuneration for his activity. The university is obliged, on the basis of the employment relationship, to retain Wages Tax, the Solidarity Supplement, and, if applicable, Church Tax, before the disbursement of each salary payment to Andrew.

As from 2017, Andrew can submit a corresponding tax declaration to the tax authority responsible for his place of domicile in Germany. In this context, account will be taken of his incomes in the full extent. Furthermore, Andrew can claim, for the year of his move to Germany (2017), occupational expenses which were associated with the assumption of his activity. In this case, account will be taken, *inter alia*, of the costs of the flight from the USA to Germany, costs relating to the move, and the occupational expenses in the context of the activity as an employee. A corresponding listing is provided in the section of the Checklist under Point IV of the Annexes.

If Andrew has additional sources of income in the USA, then these too must likewise be cited in the tax declaration (taking account of Points 2. and 3.) on the basis of his move to Germany.

2. Procedure with regard to income from abroad

In principle, sources of income from abroad are to be cited in the tax declaration within the framework of the unrestricted tax obligation, on the basis of what is known as the World Income principle.

In the case of Andrew, all the sources of income, which he obtains anywhere in the world, are to be cited in Germany in the tax declaration for the year of his move (2017) and the two further years at the university in Berlin.

For example, if Andrew has income from capital assets or from the leasing or renting of real estate in the USA, then these sources are likewise to be declared within the framework of his tax declaration in Germany. The issue, however, is always what kind of income is involved, and what important inter-state regulations in the form of a double taxation treaty (DTA) must also be taken into account. A consideration of each individual case is essential in this situation.

3. Consideration of a double taxation agreement (DTA)

With regard to the inclusion of additional sources of income from abroad, the issue is essentially that of the State treaty between Germany and the country in which the person previously had domicile or residence.

In the case of Andrew, the DTA between Germany and the USA is to be referred to. In that context, the provisions of Article 15 and Article 20 are of decisive relevance.

Art. 15 of the Germany–USA Double Taxation Agreement deals with the matter of employees. According to this, the wages are to be taxed in the country in which they are earned. Exceptions apply if a period of 183 days is not exceeded, and the wages are not paid by an employer abroad, or by an operational or business facility in the state of residence.

Andrew is a US citizen by birth, but employed in Germany and demonstrably longer than 183 days in Germany. Moreover, he has a domicile in Germany, and his residence, as well as a German employer, and his salary is paid in Germany. This income is therefore indisputably to be taxed in Germany.

For universities and colleges, Art. 20 of the Germany–USA treaty relating to the issue of guest professors and their teaching activity is of importance. In this context, a limit of 2 years would pertain, during which the taxation law relating to the sources of income in Germany would also pertain to the USA. In this respect, however, the issue of domicile and usual place of residence would have to be analyzed in close detail, by way of an individual case consideration.

Moreover, in the individual case consideration with regard to further sources of income of the taxpayer, other articles of the Double Taxation Agreement would likewise be brought to bear. These would have to be examined in detail in the context of an individual consultation with the respective person. Likewise, the obligations in respect of proof are to be considered, which are also to be explored separately in the individual case.

IV. Restricted Tax Obligation

1. How will the tax procedure be carried out?

The taxing of incomes of foreign nationals in Germany as subject to restricted tax obligations is more complex than with unrestricted tax obligations. One fundamental difference in the process of taxation arises in this case due to the tax authorities not having access to the person subject to restricted taxation and their assets, since they do not maintain domicile or usual residence in Germany. As a result of this, the law specifies that the corresponding imposition of tax on incomes is already applied at what is referred to as the source of the income (place of work principle). This means that for all types of income it is the domestic principal or employer who is basically responsible for the deduction of tax with regard to German income, and who must channel the corresponding taxes to the tax authority responsible for their business or operational facility.

If this principle is applied in the example of Ricarda, then the employer, in this case the University of Regensburg, is responsible for the deduction of tax. The agreed fee or remuneration for the period of the series of lectures is the wage, which the employer will then subject to tax (taxation at source). For the university sector and for a regular employee relationship, the rate of tax at the present time is a lump-sum rate of 15 percent for remunerations and other settlements which may be due. This tax retention must be channeled directly by the University to the tax authority in Regensburg which is responsible for it.

Ricarda has the possibility, however, of having all the occupational expenses associated with her activity at the University of Regensburg (such as flight costs, etc.), to be certified as deductible occupational expenses by the operational facility tax authority of the University. An important issue here is that this application must be made promptly and during the employment relationship, so that these occupational expenses can already be taken into account as deductible within the framework of the salary calculation by the employer, and the appropriate taxation procedures can be carried out. It is to be borne in mind in this context that lump-sum amounts which may pertain can only be allowed on a time-proportional basis.

2. Procedure with regard to income from abroad

Ricarda is only subject to a restricted tax obligation, and, despite her appointment in Germany, is engaged in Rio de Janeiro for the remainder of the year at the university there, i.e. for 7 months, and receives a salary. An important issue for Ricarda is which sources of income in Germany fall under the restricted tax obligation, and which remain not taken into consideration.

In principle, for the restricted tax obligation only all those sources of income are relevant which this person obtains in and from Germany. For Ricarda, this means that her sources of income in Brazil are not included in the tax calculation in Germany. On this basis, she needs only have the income taxed which she receives from the University of Regensburg. All further sources of income in Brazil or elsewhere remain excluded from the tax imposition.

3. Special considerations for employees from EU/EEA countries

For persons from the European Union and the countries of the European Economic Area who have domicile or usual place of residence in those countries, the possibility pertains, in the context of the restricted tax obligation, to have the imposition of income tax postponed on application. In this case, the occupational expenses for the period may be claimed, without a separate certification being presented by the operational facility tax authority. The application is made by the submitting of the corresponding Income Tax declaration for the respective year, providing details of the EU/EEA status.

4. Consideration of existing double taxation agreements (DTA)

Since in the case of restricted tax obligation only the sources of income are relevant which were obtained in or from Germany, in the first instance no double taxation treaties are to be taken into account in the taxation procedure in Germany.

Nevertheless, the double taxation agreement of the respective country of domicile or residence is relevant in order for the sources of income taxed in Germany to be introduced in the first named state in a tax declaration appropriate to that country.



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