

## **I'm not a Ghanaian Citizen, and I don't live in Ghana as much as I live in my home Country. On what Bases can Ghana Assert Taxing Rights on Persons & Incomes in Ghana?**

**Introduction:** Worldwide, there are two (2) bases for the asserting of taxing rights; and these are the Source Basis, and the Residency Basis. We will discuss the source basis in this article, and touch on the residency basis in a later piece.

- 1. Source Basis:** Ordinarily, countries assert taxing rights on incomes that have a source in their countries or jurisdictions. That is to say, whether the earner of the income is resident in that jurisdiction or not, a country may assert the primary or first taxing rights over an income that is sourced within that jurisdiction, except where an agreement made by that Country/State with another or other states provide for a different treatment for certain classes of incomes which may be sourced in one state.

In Ghana, section 105 of the Income Tax Act, 2015 (Act 896) provides that the following incomes have a source the country:

- ✚ (a) dividends paid by a resident company;
- ✚ (b) interest paid, (i) where the debt obligation giving rise to the interest is secured by real property located in the country; (ii) by a resident person; or (iii) by a Ghanaian permanent establishment;
- ✚ (c) payments (i) made in respect of a natural resource situated within the country or its territorial waters and taken from land or the sea; or (ii) computed by reference to a natural resource situated within the country or its territorial waters taken from land or the sea;
- ✚ (d) rent paid for the use of an asset situate in the country or the right to use an asset situate in the country or forbearance from using an asset situate in the country;
- ✚ (e) royalties paid for the use of an asset in the country, right to use an asset in the country or forbearance from using an asset in the country;
- ✚ (f) premiums for general insurance paid to a person in respect of the insurance of a risk in the country and proceeds from general insurance paid by a person to an insured person in respect of the insurance of a risk in the country;

- ✚ (g) payments received by a person who conducts a relevant transport business as payment for (i) carrying passengers, cargo, mail or other movable tangible assets that are embarked in the country, other than as a result of transshipment; or (ii) renting containers and related equipment which are supplementary or incidental to the business referred to in subparagraph (i)
- ✚ (h) payments received by a person who conducts a business of transmitting or receiving messages by cable, radio, optical fibre or satellite or electronic communication in respect of the transmission, reception or emission of messages by an apparatus located in the country, whether or not the messages originate, terminate or are used in the country;
- ✚ (i) payments for or attributable to employment, service rendered or a forbearance from exercising employment or rendering a service (i) in the country, regardless of the place of payment, or (ii) where the payer is the Government of Ghana, regardless of the place of employment, rendering of service or a forbearance of that service, including service fees of a type not mentioned in paragraph (g) or (h);
- ✚ (j) a return by way of proceeds of life insurance and retirement payments not falling within paragraph (i), paid by a resident person or a permanent establishment in the country, and any premium or retirement contribution paid to a resident person or a permanent establishment in the country to secure the return;
- ✚ (k) gifts and other gratuitous payments in respect of business or investment conducted with domestic assets and received by a person;
- ✚ (l) gifts or other gratuitous payments in respect of employment or otherwise, and received by a person;
- ✚ (m) payments made in respect of (i) the acquisition of a domestic asset, incurring a domestic liability or the realisation of that asset or liability; or (ii) activity conducted or a forbearance from conducting an activity in the country; and
- ✚ (n) any other payments brought into or received in the country by a resident person.

**Conclusion:** Though you may not be a Ghanaian Citizen, and you may not live in Ghana as much as you live in your home Country, Ghana can assert primary taxing rights over all the income streams stated above because they

are considered to have a source in Ghana. Where your home Country has a Double Tax Treaty with Ghana, or where your domestic laws provide for default relief mechanisms, there may be a Credit, Exemption, or Deduction relief for some or all the taxes you might have paid in Ghana on these incomes. The question of how much time you must live in Ghana to become resident for tax purposes will be dealt with in the series on Residency.

**Caveat:** *This article is not intended to be a tax advice for which the writers accept any liability for reliance over same without the written consent of the Managing Partner of the issuing firm.*

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