**Part 2-The Residency Basis of Taxation.**

**Introduction**: In our previous article, we noted that there are two bases on which States assert taxing rights, and we discussed the Principle of Source as one of the bases. In this article, we discuss the Residency basis of Taxation. The residency basis/principle of taxation posits that incomes are taxed because the earner of the income resides (for tax purposes) in one jurisdiction or the other. This may not matter whether the income is sourced in the jurisdiction or not.

**Who is a resident of a State for tax purposes?** Article 4 (1) of the OECD's Model Tax Convention (November 2017) provides that "*For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognised pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein*".

**Two (2) issues stand out from this general definition**:

1. **The Domestic Law:** The question of who a resident of a State is, is one who the domestic laws of that state says is resident. That is to say, if the Laws of Ghana say you are a resident of Ghana, you are resident.
2. A person does not become resident in a state only for the reason that they earned an income that has a source in that state.

**Who does Ghanaian Law call a Resident for tax purposes?** Section 101 of the Income Tax Act, 2015 (Act 896) provides as follows:

(1) "An individual is resident in the country for a year of assessment if that individual is:

*(a)* a citizen, other than a citizen who has a permanent home outside of the country and lives in that home for the whole of that year;

*(b)* present in the country during that year for an aggregate period of one hundred and eighty-three days or more in any twelve month period that commences or ends during that year;

*(c)* an employee or an official of the Government of Ghana posted abroad during that year; or

*(d)* a citizen who is temporarily absent from the country for a period of not more than three hundred and sixty-five continuous days, where that citizen has a permanent home in Ghana.

(2) For purposes of this Act, a partnership is resident in the country for a year of assessment if any of the partners resided in the country at any time during that year.

(3) A trust is resident in the country for a year of assessment if *(a)* that trust is established in the country; *(b)* a trustee of the trust is resident in the country at any time during that year; or *(c)* a person resident in the country directs or may direct senior managerial decisions of the trust at any time during the year, whether the directive is given (i) alone or jointly with other persons; or (ii) directly or through one or more interposed entities.

(4) A company is resident in the country for a year of assessment if

*(a)* that company is incorporated under the Companies Act, 1963 (Act 179); or

*(b)* the management and control of the affairs of that company are exercised in the country at any time during that year.

**Conclusion**:

It is evident that:

1. If you are a citizen of Ghana, you are resident and therefore liable to tax on all incomes you earn from wherever you earn those incomes from/during a Year of Assessment, except if you have a permanent home outside Ghana and you live in that home for the entire duration of that Year of Assessment. If you step foot in Ghana any day within the Year of Assessment, you are deemed resident for tax purposes for that Year of Assessment.
2. A non-citizen who stays in Ghana for an aggregate period of 183 days or more within any 12-month period is deemed resident and therefore liable to tax on all his incomes. Section 102 (2) of the Act 896 provides additionally that if you are not a citizen, and you are resident only on the grounds that you have lived in Ghana for an aggregate period of 183 days, you are deemed resident from the start of the 183-day period.
3. If you are an employee of the Government of Ghana and you are posted abroad, except if your employment contract stipulates

something else, then you are resident for tax purposes in Ghana for as long as you remain an employee of the Government of Ghana.

**Coming up...**

In the next series, we will discuss the situation where the laws of 2 countries/states say one (individual) is resident in both states and is thus liable to tax in both states.

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

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**Locate us at:**


Accra Office: #214 Westlands Blvd, West Legon. Near Ready Filling Station

P.O. Box CT 4723, Cantonments-Accra, Ghana.

T: +233 302912645/ +233 302434447

Takoradi Office:Plot #111- Airport Ridge (Near Foxx FM)

E: info@cdcconsult.org

Website: www.cdcconsult.org