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Implementation of Certain Provisions of Cabinet Decision No. 85 of 2022 on Determination of Tax Residency

Ministerial Decision No. 27 of 2023 – Issued 22 Feb 2023 (Effective 1 March 2023)

The Minister of State for Financial Affairs has decided:

- Having reviewed the Constitution,
- Federal Law No. 1 of 1972 on the Competencies of the Ministries and Powers of the Ministers, and its amendments,
- Federal Decree-Law No. 13 of 2016 on the Establishment of the Federal Tax Authority, and its amendments,
- Federal Decree-Law No. 28 of 2022 on Tax Procedures,
- Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses,
- Cabinet Decision No. 85 of 2022 on Determination of Tax Residency,

Article 1 – Definitions

Words and expressions in this Decision shall have the same meanings specified in the Cabinet Decision No. 85 of 2022 on Determination of Tax Residency unless the context requires otherwise.

Article 2 – Usual or Primary Place of Residence and Centre of Financial and Personal Interests in the State

1. A natural person's usual or primary place of residence is in the State if the State is the jurisdiction where the natural person habitually or normally resides.
2. The place where the natural person habitually or normally resides is the jurisdiction where he spends most of his time when compared to any other jurisdiction as part of his settled routine in a way that is more than transient and that should be taken into account in the determination of whether a natural person's usual or primary place of residence is in the State.
3. A natural person's centre of financial and personal interests is in the State if the State is the jurisdiction where the natural person's personal and economic interests are the closest or of the greatest significance to the natural person.

4. The place of the natural person's occupation, familial and social relations, cultural or other activities, place of business, place from which the property of the natural person is administered and any other relevant facts and circumstances should be taken into account in the determination of whether a natural person's centre of financial and personal interests is in the State.

Article 3 – Calculation of Time Periods

1. The term "day" means calendar day and the term "month" means calendar month.
2. All days or parts of a day on which a natural person is physically present in the State count towards the total number of days he is present in the State during a relevant consecutive (12) twelve-month period.
3. The days on which the natural person has been physically present in the State do not need to be consecutive in determining whether the (183) one hundred and eighty-three day or (90) ninety-day period has been met during the relevant consecutive (12) twelve-month period.

Article 4 – Exceptional Circumstances

1. Any day that the natural person's presence in the State was due to exceptional circumstances may be disregarded by the Authority in determining whether the (183) one hundred and eighty-three day or (90) ninety-day period has been met during the relevant consecutive (12) twelve-month period.
2. An exceptional circumstance is an event or situation beyond the natural person's control, occurring while he is already in the State, which he could not reasonably have predicted or prevented and which prevents him from leaving the State as originally planned.

Article 5 – Permanent Place of Residence

1. A Permanent Place of Residence is a furnished house, apartment, room or any other form of dwelling, made continuously available to the natural person.
2. The Permanent Place of Residence shall be considered as being available to the natural person where the natural person has the continuous right of occupation therein at all times and on a regular basis with some degree of permanency and stability and not just occasionally or for the purposes of a stay of a short duration.

3. A Permanent Place of Residence is not required to be owned by the natural person but can be rented or otherwise occupied by him as a dwelling.

Article 6 – Employment

1. A natural person shall be considered as carrying on employment in the State in either of the following two cases:
 - a. If he is party to a contract with an employer, which is incorporated or otherwise formed or recognised in the State, under which the natural person undertakes to offer a service to the employer under their administration or supervision for a promised remuneration paid by the employer in the State.
 - b. If he is in a continuing relationship where all or substantially all of his income for his labour is derived from one party whereby the income received by him constitutes remuneration for his labour performed in the State.
2. The nature of the employment can be limited or unlimited and the work may be carried out on a full time or part time basis.
3. A voluntary role for which the natural person does not enter into a contract does not constitute employment.

Article 7 – Clarifications and Directives

The Authority shall issue clarifications and directives for implementing any of the provisions of this Decision.

Article 8 – Publication and Application of this Decision

This Decision shall be published in the Official Gazette and shall come into force on 1 March 2023.