

Taxation of payments made after the end of duty in international assignments

We are experiencing a period in which global capital mobility has increased and this increase is accompanied by another global mobility. Throughout this mobility that we qualify as “international assignments”, employees fulfil their duties given by their employers in the concerning countries following the footsteps of capital. The aforementioned mobility of workforce, on the other hand, causes the taxation of compensations to become a more complex and specialized branch day by day.

One of the significant issues on how to tax the income of any person is a matter of residence. Residency is a concept that refers to the person’s being considered as settled in terms of taxation. In principle, persons are taxed in the countries on which they are resident for their whole income in the world. The situation whether or not people are deemed resident in the related countries is determined by the local tax laws of the concerning countries. However, in international assignments, situations may be arising that persons are deemed to be resident in both countries according to local regulations. In such cases, under the existence of a double taxation agreement between the two countries, this agreement shall be applied to determine the settlement. Another significance of residency is that avoiding double taxation is the liability of the country in which the person is resident regarding the circumstances that double taxation occurs.

In general, expatriates depart Turkey permanently by the end of international assignments and start to be qualified as limited taxpayer (non-resident) in that sense. Non-residents pay tax in Turkey only for the income they acquire from Turkey. For the income to be acquired in Turkey, as per the Income Tax Law, the service should be carried out in Turkey, the payment should be made from Turkey or charged as expense in Turkey.

Therefore, the state of being a limited taxpayer does not imply that the interests obtained by persons after leaving Turkey for their services carried out in Turkey previously will not be subject to taxation. Despite the existence of some exceptions, compensation is widely defined in the Income Tax Law and it is ensured that payments to be made afterwards for services provided in the past shall be taxed as wages.

Additionally, the legislation for double taxation avoidance treaties has a structure allowing the taxation of compensations in Turkey for the period that the service had been carried out in Turkey regarding the payments following the assignment.

Among the above-mentioned interests, the most common in practice are the premiums paid for past performances, severance pay and share acquisition plans. The income corresponding to the period for which the service is carried out in Turkey is considered as a Turkey origin revenue and will have to be taxed even in the circumstances that the payment was made outside Turkey and was not charged out to the employer in Turkey and people are treated as limited taxpayers in Turkey.

However, it should not be ignored that some problems related to tax may arise in practice. These problems can be briefly classified into three groups:

- Difficulties faced by fully amenable taxpayers when providing the documentation required for avoidance of double taxation in Turkey the way demanded by the lawmaker and within the specified legal period.
- For limited taxpayers, the complex structure of taxation of compensations made following the assignment that requires expertise and difficulties faced during the refund of the tax paid unduly in certain cases.
- The detection of the authorized tax office during the declaration process and the difficulties in the acceptance of that process by that authority regardless of the liability.

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