

POLAND | UKRAINIAN NATIONALS - TAX PAYMENTS IN POLAND AND RESIDENCE PERMIT APPLICATIONS

Summary

183 days in Poland have just passed or will pass very soon for the Ukrainian nationals who have entered the country as of the end of February. It means that many Ukrainian nationals who have been working in Poland remotely for their Ukrainian employers could become subject to Polish personal income tax.

At the same time, a window to apply for a residence permit in Poland is also approaching. The Ukrainian nationals should not only be prepared for long queues, but also consider the impact on their tax liabilities.

Both matters trigger a lot of questions and uncertainties. Please read the comments of Vialto Partners Poland experts on these two important subjects.

The Detail

Tax obligations in Poland

Tax residency

A tax resident in Poland is an individual who meets at least one of the following three criteria:

- 1) has their centre of personal interests in Poland (e.g. location of immediate family/life partner, personal ties to Poland) or,*
- 2) has their centre of economic interests in Poland (place where income is generated, work performed) or,*
- 3) their length of physical stay in Poland exceeds 183 days in a calendar year.*

However, if the given person is at the same time treated as a Ukrainian tax resident based on local tax law of Ukraine, the Poland-Ukraine Double Tax Treaty provisions must be checked to identify which country should qualify this person as their tax resident.

What are the consequences of being a tax resident or a tax non-resident in Poland?

The status of a tax resident in Poland means that a taxpayer should declare his/her worldwide income for tax purposes in Poland, regardless of the country in which such income has been earned (it is called an unlimited tax liability).

A tax non-resident of Poland is only subject to Polish taxation on income sourced in Poland. In such a situation, a taxpayer is subject to a so-called limited tax liability. It should be noted that income sourced in Poland refers to, among others, employment remuneration paid for work activities physically carried out in Poland regardless if such remuneration is paid by a Polish or foreign (e.g. Ukrainian) entity.

Stay in Poland

As per the Special Regulations in Poland, Ukrainian nationals, who entered Poland after 24 February 2024 escaping the war, can stay in Poland for 18 months (counted from 24 February 2022). They are also eligible to apply for a 3 year residence permit in Poland, but only after 9 months of stay in Poland and not later than after 18 months counted as of 24 February 2022. This means that by the end of November, the first refugees would be able to file residence permit applications. At the same time it must be taken into account that the window will open for a great number of Ukrainian individuals as many of them entered Poland at the end of February/beginning of March 2022.

30 days outside Poland

As per the Special Regulations, the stay of an Ukrainian national, a beneficiary of the Special Act, outside of Poland for more than 30 days deprives a person of the right to stay in Poland for 18 months without additional title. The break in stay over 30 days impacts the eligibility of applying for a residence permit and a legal stay. This may also impact the tax liabilities.

Residence permit vs. tax residence

Would obtaining a residence permit have an impact on the tax residence?

In general the conditions determining tax residency refer to the length of stay and centre of vital interests. The longer the stay in Poland is, the stronger ties to Poland may be built - e.g. a lease agreement might be signed, children might be enrolled in Polish schools or kindergarteners, bank accounts set up in Poland, work can be carried out from Poland, etc). The residence permit itself is not decisive, however, the entire individual situation and all the circumstances should be taken into account.

Remote work performed in Poland under the Ukrainian employment contract

Is a work permit required?

In some cases, no work permit would be required, however, detailed analysis is recommended. There is a thin line between remote work and activities which might be viewed as remote work but still requiring a work permit (e.g.in case the instructions are given from Poland, the work is carried on the Polish company premises, etc.).

Is income from remote work taxable in Poland?

Remuneration for work performed on the territory of Poland, even if paid by a Ukrainian employer for work carried out remotely for the benefit of the Ukrainian entity should be regarded as a Polish source income.

Such income can be exempt from Polish taxation based on the Poland-Ukraine Double Tax Treaty only in certain specific circumstances (e.g. an individual maintains tax residency status in Ukraine and the stay in Poland does not exceed 183 days in a calendar year). Exceeding 183 days of stay in Poland triggers taxation in Poland on a retroactive basis.

On the other hand, Ukrainian employees who should be recognized as Polish tax residents (e.g. as a result of their election to be treated as such or due to their personal circumstances) are liable to pay Polish tax on their Ukrainian employment remuneration as of day 1 of their work in Poland (or as of the moment they become Polish tax residents).

Taxation of Ukrainian income has also been addressed in the response of the Ministry of Finance to Better Regulation Delivery Office Ukraine.

Recommended action

Having in mind the above, the employers in Poland should consider the following:

- *Taxation in Poland of the Ukrainian nationals hosted in Poland may take place - detailed analysis of the obligations should be carried out.*
- *Legal status of the Ukrainian employees should be analysed and the timing for filing of the residence permit application and its consequences considered.*
- *Large numbers of the resilience permit applications may be filed as of end of November impacting processing times for other applications. This should be taken into account for planning of the immigration processes for non-Ukrainian employees.*

How we can help

Vialto Partners can help with:

- *Assessing the individual situation from the perspective of tax and immigration;*
- *Planning of the immigration process;*
- *Tax and immigration compliance.*

Contact us

Please reach out to the following contact to discuss the topics further:

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