

ETRS/SRTL Public Ruling 2001/11

Public Ruling: Who is a resident of East Timor for tax purposes?

Relying on this Ruling

This is a public ruling within the meaning of Section 66 of Regulation 2000/18. Information in this ruling may be relied upon by taxpayers as the basis for determining their tax liability.

Introduction

1. There are a number of rules in the wage income tax and income tax provisions that distinguish between the tax treatment of a "resident" of East Timor and that of a "non resident".
2. In the wage income tax, different rates of wage income tax are imposed on the wages of resident natural persons and non-resident natural persons. Also, there is an exemption for wages paid to qualifying *non-resident* persons under a contract of employment entered into prior to 30 September 2000 to provide services for a project approved by UNTAET and funded by a foreign government.
3. In the income tax, the distinction between residents and non-residents is relevant for several reasons:
 - there are different rates of withholding imposed on business income and investment income paid to residents and non-residents;
 - withholding tax imposed on many types of business income of residents is non-final while withholding tax imposed on income of non-residents is final; and
 - resident taxpayers are entitled to a "foreign tax credit" in respect of any foreign tax imposed on foreign source income they derive (Directive 2001/2, s. 27).
4. This Public Ruling explains when a natural person and a legal person will be a resident of East Timor. Any natural person or legal person who does not satisfy the definition of a resident will be a non-resident of East Timor for tax purposes (Regulation 2000/18, s. 3).
5. A natural person or a legal person that is not a resident of East Timor may derive income through a permanent establishment in East Timor. The provisions in the tax law which apply to income derived by non-residents through permanent establishments are in many cases similar to those that apply to residents.

6. A permanent establishment of a non-resident means an establishment to conduct business or engage in activities in East Timor (*Law of Income Tax*, Art. 2(5)) including:

- a place of management;
- a branch office;
- a representative office;
- an office building;
- a factory;
- a workshop;
- a place of mining, drilling or extraction of natural resources;
- a fishery, place of animal husbandry, farm, plantation or forest;
- a construction, installation or assembly project;
- the furnishing of services in any form by employees or other persons if the services are provided for more than sixty days in any twelve month period;
- an agent other than an agent of independent states;
- an agent or employee of a non-resident insurance company where the company receives insurance premiums from East Timor or insures risks in East Timor.

With the exception of a permanent establishment constituted by the furnishing of services by employees or other persons, there are no time limits that must be satisfied for one of the items noted to be a permanent establishment.

7. The classification for tax purposes of a natural person or legal person as a resident or a non-resident has no effect on a person's status for other reasons such as citizenship, rights of entry, or immigration.

When is a natural person a resident of East Timor?

8. A natural person (an individual) is generally regarded as being a resident of East Timor for tax purposes if the person is present in East Timor for more than 182 days in a tax year. A natural person who has been present in East Timor for more than 182 days in a tax year could however be regarded as a non-resident where their permanent place of abode is not in East Timor (Regulation 2000/18, s 3).

9. For the purpose of applying the definition of a "resident", a person is considered to be present in East Timor on the day of arrival in East Timor and on the day of departure.

10. Where a person becomes a resident of East Timor during a tax year, the person is treated as a resident from the time they became a resident, not from the beginning of the tax year. Similarly, when a person ceases to be a resident, the person is treated as a resident until the time the person ceases to be a resident.

Example:

Joao Araujo moves to East Timor to take up residence on July 1, 2001. On June 30, 2008 he moves from East Timor to Portugal.

In 2001, Joao is a resident from July 1. As a result, he will be liable to tax on his worldwide income from July 1, but only his income from sources in East Timor in the period January 1 until June 30 will be a tax object. In 2008, Joao ceases to be a resident after June 30. After June 30, only his income from sources in East Timor will be a tax object.

11. A person who is present in East Timor for more than 182 days in a tax year will be a resident of East Timor unless the person's *permanent place of abode* is not in East Timor. The 182 days in East Timor does not need to be continuous. Where a person's presence in East Timor spans two (or more) tax years, the 182 day test will be considered separately in respect of each tax year.

12. A person's *current* place of abode is the place where the person is residing from time to time. However, a *permanent* place of abode is the place that a person maintains and has available as a place of abode even when the person is temporarily absent from the country. Permanent in this sense does not mean everlasting but rather that an abode is maintained and available for a person as a permanent place of residence at a particular time when the person is away from the ordinary place of residence.

13. Where a person's permanent place of abode is found is an objective question of fact. A subjective hope or intention to return to a place will not on its own make that place into a permanent place of abode. Rather, the place must be maintained and available as a permanent place of abode. This means that if a person claims a place other than the place at which the person is currently living is actually the person's permanent place of abode, there must be objective evidence to show the other place is actually being maintained and available as the permanent place of abode.

14. A variety of objective factors may be used to demonstrate that a place other than the place at which a person is currently living is being maintained as the person's permanent place of abode. These include:

- maintenance of a residence at which a spouse or a spouse and dependent members of the person's family reside;
- operating bank accounts, credit cards and other financial indicators from the place of permanent abode;
- taking out of health insurance at the place of permanent abode;
- maintenance of a vehicle and vehicle insurance at the place of permanent abode; and
- maintenance of ordinary social ties such as club memberships.

15. These factors may be used to show that a permanent place of abode is being maintained in the tax year. The most important of these for this purpose is actual maintenance of another residence. In the absence of another residence, the other factors indicate that the person plans to return to another jurisdiction in the future but not that the person has maintained a permanent place of abode elsewhere in the tax year.

Example 1:

Philip Clarke lives in Darwin with his wife and two children. In April 2001 he is offered a nine-month position with an ETTA department. He moves to Dili at the end of April to take up the position. His family stays in his Darwin house and he flies home to visit them on a weekend once every six weeks. He has maintained his vehicle, health insurance and membership in various Darwin clubs and organisations.

Although Philip will be in East Timor for more than 182 days in 2001, he will not be a resident of East Timor because he can establish that he has a permanent place of abode in Darwin. It is his intention to return to this abode and it is being maintained for his return.

Example 2:

Robert Black lives in Washington, D.C. with his wife and son, who attends university in Washington. Robert is offered a two year contract with an international non-governmental organisation, to be based in Dili. The organisation indicates that the contract can be extended if funding is available at the end of the two year period. Robert accepts the offer and he and his wife make arrangements to move to Dili. They organise for the storage of their furniture and car. Their son moves to a student residence at the university and they rent their house. Their intention is to return to Washington at the

end of the two year contract though they agreed to rethink their situation if an extension is offered. Robert has retained all his bank accounts and credit cards so he can continue to use them when making short trips out of Dili but has suspended his gym membership.

Robert and his wife are residents of East Timor in 2001. They are in East Timor for more than 182 days and they do not have a permanent place of abode elsewhere. While they do own a residence in Washington, it is not a permanent place of abode because it is not being used or maintained as a place of abode while they are present in East Timor.

16. The East Timor Revenue Service will generally accept a person's "self determination" of whether they are a resident or non-resident for tax purposes. Other parties, such as employers and tenants, who are required to withhold tax from payments they make should also accept the "self determination" of the payee (e.g. employee/landlord) or seek advice from the East Timor Revenue Service.

17. If the East Timor Revenue Service subsequently obtains evidence, usually through a tax audit, that a person had no evidence to support their self-determination, penalties may apply.

When is a legal person a resident of East Timor?

18. A legal person (a non-individual) is a resident of East Timor when the legal person was incorporated, formed, organized, or established in East Timor (Directive 2001/2, s. 1). This wording reflects the different types of legal person and the different ways they can be set up. In essence, the sole test of residence for a legal person is the place where the legal person was established or otherwise formed.

Date of Effect

19. This ruling has effect from 31 March 2001.

Thomas Story
Commissioner of East Timor Revenue Service
31 March 2001

Legislative references:

definition of "resident"

Reg 2000/18, s 3

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definition of “non-resident”	Reg 2000/18, s 3
resident legal person	Dir 2001/2, s. 1
permanent establishment	<i>Law of Income Tax</i> , Art. 2(5)
foreign tax credit	Dir 2001/2, s. 27