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Tax Residency Rules in Ghana : Preparing Multinationals for Compliance

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Outline

- Introduction
- Legal Regime
- Tax residency



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OBJECTIVES

➤ *PRESENTATION OUTCOME IS TO :*

- ❑ *Understand the determinants of tax residency in Ghana***

- ❑ *Increase awareness about the key regulations as regards tax residency in Ghana***

- ❑ *Discuss common challenges and explore best practices for overcoming tax residency issues facing multinationals in Ghana***



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INTRODUCTION

Tax is a compulsory charge imposed by a State on a person in a jurisdiction for the provision of public goods and services. Despite being a compulsory levy, it can only be charged when a law provides for such imposition.

Tax is a creature of statute and no tax can be paid without a law. This principle is evident in Article 174(1) of the 1992 Constitution which states that, *“No taxation shall be imposed otherwise than by or under the authority of an Act of Parliament”*.

LEGAL REGIME

- *Territorial (Source) Concept of Taxation* introduced under the:
 - Income Tax Ordinance No. 27 of 1943,
 - Income Tax Decree of 1966 (NLCD 78),
 - Income Tax Decree of 1975 (SMCD 5),
 - Internal Revenue Act, 2000 (Act 592),
- *Worldwide or global taxation of income* introduced under
 - Income Tax Act, 2015, (Act 896)
 - Act 896 imposes taxes on the total income of a “Resident Person(s)” from all sources (domestic and foreign) of income. (sections 3, 103, 105 and 111 of Act 896).



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Resident Person for Tax purpose?

- A *“Person”* for tax purpose may be defined to include;
an individual, a company, a trust, a partnership, or any other person(s)
specified under a tax law of any country under some criteria:
 - person’s domicile,
 - residence,
 - place of incorporation,
 - place of management or
 - any other condition of that nature.
- Section 133 of Act 896, defines a person to include an individual and entity
- Section 101 provides criteria in determining who a *“Resident Person”* is in Ghana.



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RESIDENT INDIVIDUAL

An Individual:

An individual is resident for tax purposes in Ghana for a year of assessment if that individual is:

- *a citizen, who has a permanent home in Ghana and lives in that home for the whole for that year of assessment,*
- *present in Ghana during that year for an aggregate period of 183 days or more in any 12-month period that commences or ends during that year,*
- *an employee or an official of the government of Ghana posted abroad during that year, or*
- *a citizen who is temporarily absent from Ghana for a period of not more than 365 continuous days, where that citizen has a permanent home in Ghana.*



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cont.

RESIDENT INDIVIDUAL?

- *a citizen who maintains a permanent home in Ghana is resident for tax purposes even if that person is temporarily absent from Ghana for a period not exceeding 365 continuous days within a year of assessment.*
- *an employee or official of the Government of Ghana who is posted abroad during a year of assessment;*
- *A non-citizen is resident for tax purposes if that individual is present in Ghana for a period or periods amounting in aggregate to 183 days or more in any twelve-month period that commences or ends during the year of assessment.*



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RESIDENT - PARTNERSHIP & TRUST

A Partnership:

- *any of the Partners resides in Ghana at any time during that year.*

• Trust:

- *trust is established in Ghana;*
- *a trustee of the trust is resident in Ghana at any time during that year; or*
- *a person resident directs or may direct senior managerial decisions of the trust at any time during the year, whether the directive is given,*
 - *alone or jointly with other persons; or*
 - *directly or through one or more interposed entities.*



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RESIDENT COMPANY

A company:

- *Company is incorporated under the Laws of Ghana {Companies Act 2019, (Act 992)}; or*
- *The management and control of the affairs of that company are exercised in Ghana at any time during that year.*



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Place of Effective Management (PoEM)

- PoEM is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.
- Generally some factors which may to be considered in determining the PoEM include:
 - ✓ Place where meetings of the board of directors or equivalent body are usually held
 - ✓ Place where the CEO and other senior executives usually carry on their activities



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Place of Effective Management (PoEM) – Con't

- ✓ Place where the senior day-to-day management of the entity is carried on
- ✓ Place where the entity's headquarters is located
- ✓ Place of which country's laws govern the legal status of the entity
- ✓ Place where it's records are kept



Permanent Establishment (Section 107)

- A permanent establishment is an entity separate from its owner and:
 - (a) is subject to tax under section 1 in the same manner as a resident company, if the permanent establishment is a Ghanaian permanent establishment; and
 - (b) in accordance with section 111(2), is exempt from tax if that permanent establishment is situate outside of the country



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Permanent Establishment - Con't

The income of a permanent establishment and any tax liability is computed as if

- (i) that permanent establishment and its owner were separate but are persons in a controlled relationship;
and
- (ii) that permanent establishment is a person resident in the country in which it is situated;



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Permanent Establishment - Con't

- An activity of a permanent establishment is that activity conducted by the owner through the permanent establishment.



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Permanent Establishment - Con't

The following activities are treated as conducted by a Ghanaian permanent establishment:

- (a) when the owner employs an individual who is resident in the country;
- (b) when the owner makes a sale of trading stock of the same or a similar kind as those sold through the permanent establishment; and
- (c) other business activity of the owner which is of the same or a similar kind as that effected through the permanent establishment, conducted with a person resident in the count



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Foreign permanent establishment

- Means a fixed place of business of a resident person situated in a foreign country where the business is conducted continuously for at least six months, but excludes any place at which only activities of a preparatory or auxiliary nature are conducted



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Ghanaian permanent establishment

- ✓ A place in the country where a non-resident person carries on business or that is at the disposal of the person for that purpose
- ✓ A place in the country where a person has, is using or is installing substantial equipment or substantial machinery



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Ghanaian permanent establishment - Con't

- ✓ A place in the country where a person is engaged in a construction, assembly or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to that project;
- ✓ The provision of services in the country;
- ✓ A place in the country where an agent performs any function on behalf of the business of a non-resident person



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Tax Treaty in Ghana

Who qualifies

- The taxpayer must:
 - ✓ be a resident of Ghana.
 - ✓ be resident of the treaty partner; or
 - ✓ be a resident of both Ghana and the treaty partner
 - ✓ be a beneficial owner of the income
 - ✓ meet any Limitation of Benefits (LOB) or Entitlement to Benefits provisions contained in the treaty, where applicable.



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Conditions for Deriving Treaty Benefits

- ✓ The taxpayer is liable to tax in the treaty country of which that taxpayer is a resident.
- ✓ The income in question is not exempted from tax in Ghana.
- ✓ The tax in question is covered by the DTA.
- ✓ The benefit is not specifically excluded under the DTA.
- ✓ The benefit is claimed within the time stipulated by the treaty or domestic laws.



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Treaty Benefits

- ✓ Relief from double taxation
- ✓ DTA withholding tax rates for passive income or fees for technical service derived from Ghana by residents of a treaty partner.
- ✓ DTA tax rates to foreign airlines or shipping companies or exemption of their income from tax.
- ✓ Access to Mutual Agreement Procedure (MAP) for dispute resolution.
- ✓ Non-Discrimination in Taxation Matters.



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*Thank
you*





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