



General Financial Directorate
Lazarská 15/7, 117 22 Praha 1

Methodology and Performance of Taxes Section

Ref. No.: 3324/20/7100-40112-803723

Information of the General Financial Directorate on issuing Certificates of the Tax-payer's Residence

1. Introduction

As a result of the uniform procedure when dealing with tax-payers' applications for issuing the certificate of the tax-payer's residence in the Czech Republic and for levying the administrative fees in accordance with Law No. 634/2004 Coll. on Administrative Costs, as amended, (hereinafter only "the Law on Administrative Costs"), the General Financial Directorate (GFD) releases the following information.

2. Basic Information

For the purpose of double taxation avoidance, using benefits arising from double taxation treaties regarding income from foreign sources (e.g. royalties, dividends, interest income), where appropriate also for applying tax advantages stipulated in foreign tax regulations or for other purposes (e.g. business activities abroad – participation in tenders, establishment of a branch, permanent establishment abroad, etc.), the tax-payer may ask its locally competent tax administrator for issuing the certificate of the tax-payer's residence of the Czech Republic. In the case of so called "contracting states" (i. e. states, with which bilateral international tax treaty is in force and applicable) the tax administrator confirms the tax domicile for the above mentioned purpose either on a form of the Ministry of Finance No. 25 5232 (Attachment 1)¹, or on a form of the foreign tax administrator submitted by the tax-payer.

Certificate of the tax-payer's residence on the form of the Ministry of Finance No. 25 5232 (Attachment 1) **cannot be issued** in the case of using the certificate of the tax-payer's residence of the Czech Republic in "non-contracting states" or in the case of tax residents of the Czech Republic who apply for the certificate in order to use it in the Czech Republic and at the same time they do not ask for tax domicile recognition under specific double taxation treaty. These tax-payers will be given „Certificate of the tax-payer's residence pursuant to the Act No. 586/1992 Coll., on Income Tax“ [hereinafter only „form for non-contracting states“; (Attachment 2)].

3. Application for the certificate of the tax-payer's residence of the Czech Republic

The certificate of the tax-payer's residence may be issued upon application, i.e. by filing it in accordance with section 70 of the Act No. 280/2009 Coll., the Tax Code, as amended (hereinafter also „the Tax Code“ or „TC“) by the tax-payer or its authorised representative. No specific format of the application for the certificate of the tax-payer's residence is required by the legislation, therefore the form of the Ministry of Finance for the application was not issued.

¹ For the purpose of higher verification, so-called legalisation – apostille of the Ministry of Foreign Affairs it is possible to use only Attachment 1

The application may be filed using specific manners stipulated in Section 71 of the Tax Code, namely in writing, orally in the protocol or through data box signed in a way with which another legal regulation connects an effect of a hand-written signature, or with verified identity of the applicant in a way that can be used for logging into his data box. In the case of electronical filing it is also possible to use electronic form "*Obecná písemnost určená pro podání orgánům Finanční správy ČR*" on the web portal of the Tax Administration of the Czech Republic.²

According to section 76 of the Tax Code, the application for the certificate of the tax-payer's residence has to be submitted in the Czech language.

Enclosed to this information can be found recommended form of the application for tax-payers – individuals (Attachment 3) and for tax-payers – legal entities (Attachment 4), that are available at the tax administrator.

The application is submitted by the tax-payer or the authorised representative at the locally competent tax administrator. The tax competency is governed by section 13 of the Tax Code.

If the tax-payer requires certificate for more than one taxable periods for one country, or for one taxable period for more countries, or where appropriate for different use purposes abroad or in the Czech Republic, it is not required to submit the applications separately. It means that the tax-payer may pool all the requirements in one application.

Tax proceedings are not initiated by filing the application for the certificate of the tax domicile. The act of the tax administrator is only issuing the certificate of the tax residence, it is not the act aiming to issuing decision according to the Tax Code.

If the tax-payer does not comply with the criteria for the tax domicile of the Czech Republic it is informed by the tax administrator that the application for the certificate of the tax residence will not be satisfied. According to the Tax Code, no remedial or supervisory instruments against the Tax Administrator's Decision are accepted.

3.1. Cases in which applications for the Certificate of the Tax Residence cannot be satisfied

If the application for the certificate of the tax-payer's residence of the Czech Republic is submitted by foreign establisher (foreign legal entity or natural person/individual) for its permanent establishment, branch office/affiliated company in the Czech Republic, the application cannot be satisfied. Permanent establishment or branch in the Czech Republic is a part of the foreign establisher that is a tax resident of another country.

If the application for the certificate of the tax-payer's residence of the Czech Republic is submitted by so called transparent entity³ the application cannot be satisfied. In the case of transparent entities' partners the tax domicile is governed by general rules. Current legal provisions do not enable issuing the certificates of the tax-payer's residence for limited partnerships or general partnerships as an entire entity, which is possible e.g. for limited liability companies or stock exchange companies. Limited partnerships and general partnerships as an entire entity do not comply with the tax domicile criteria in the Czech Republic with regard to double taxation treaties. However, that part of limited partnership which may be allocated to limited partners and for which the tax return is being submitted complies with the tax domicile criteria and the certificate regarding this part of the company (which is stated in the certificate) may be issued.

² Available at: https://adisepo.mfcr.cz/adistc/adis/idpr_epo/epo2/uvod/vstup.faces

³ See the Directive of the Ministry of Finance No. D-286 related to taxation of tax non-residents on income from sources in the Czech Republic, Ref. No.: 49/85 663/2005-493 of 1 September 2005 and Notice to practical application of Directive No. D-286 Ref. No.: 15/32 567/2006-153 of 3 March 2006

4. Issuing Certificates

4.1. Certificate of the Tax-payer's Residence of the Czech Republic on forms of the Ministry of Finance

If the tax administrator, after assessment of the facts decisive for determining the tax-payer's residence of the Czech Republic and submitted to the tax administrator by the tax-payer, draws a conclusion that all criteria were met, the tax-payer is issued „Certificate of the tax-payer's residence“ on form of the Ministry of Finance No. 25 5232 (Attachment 1). However, it applies only for so called **contracting states**, with which is the applicable bilateral international tax treaty in force, and either:

- a) as of the **specific date**, or
- b) retroactive for the **taxable period** or its part from – to

regarding letter a) as of the specific date:

The certificate „as of the date“ is issued by the tax administrator as of the day, on which the tax-payer submits the application, or of the day, which is specified by the tax-payer in the application. However, the last date, that may be mentioned in the certificate of the tax-payer's residence in the field „as of the date“, is the date when the tax administrator issued the certificate. It is not possible to issue the certificate as of the later date, i.e. as of the future date, that has not come yet. Meeting the criteria for the tax-payer's residence of the Czech Republic is then verified as of this date. If the criteria are met, the tax administrator confirms the tax-payer's residence of the Czech Republic as of that date. Certificate of the tax-payer's residence of the Czech Republic as of the specific date during the taxable period means, that the tax-payer is/was the tax resident of the Czech Republic as of the specific date. The tax-payer may ask the tax administrator for new assessment of the criteria for tax domicile, or apply for a new certificate, e.g. after the end of the taxable period.

regarding letter b) retroactive for the taxable period or its part from – to

The wording „taxable period“ in the form of the Ministry of Finance No. 25 5232 (Attachment 1) means the taxable period pursuant to section 16b of the Income Tax Act (for natural persons/individuals) and pursuant to section 21a of the Income Tax Act (for legal entities). The period that is being confirmed is usually calendar year or business year. It is possible in justified cases to confirm the tax domicile even for shorter time period, i.e. for a part of the taxable period, which is applicable in particular for tax-payers with changes in circumstances decisive for determining the tax-payer's residence of the Czech Republic that occur during the year (e.g. change of the address for individuals or change of the seat, company merger or division for legal entities), it concerns so called divided tax-payer's residence of the Czech Republic⁴. In that case will be in the certificate completed period from - to (e.g. 1. 1. 2019 – 30. 6. 2019).

regarding a) and b)

The certificate may be issued only for taxable period or part of the taxable period, that already passed, which means that it is not possible to issue the certificate of the tax-payer's residence of the Czech Republic for current taxable period or future taxable period or as of the date that has not yet come. In these cases it cannot be guaranteed that in the future will not happen any changes in circumstances decisive for determining the tax-payer's residence of the Czech Republic. In the case of changes that could influence the tax-payer's residence of the Czech Republic the tax-payer is required to notify the tax administrator and submit appropriate evidence.

⁴ article IV part 2 of the General Financial Directive D-22 to section 2 of the Income Tax Act

4.2. Administrative Fees

Certificate of the tax-payer's residence is subject to administrative fees in accordance to part I, entry 1, point 2, letter b) of the Tariff, the attachment to the Law on Administrative Costs (hereinafter only „Tariff“) at the amount of 100 CZK. It is the issuing the certificate of the tax-payer's residence of the Czech Republic that is subject to the fee, not the application itself or the application based on which the tax administrator does not issue any certificate.

In the case of certificates of the tax-payer's residence of the Czech Republic **for more than one taxable periods**, or a part of the taxable period, the appropriate number of the certificates corresponding to the number of taxable periods will be issued. The administrative charges/fees will be collected at the amount of the sum of charges according to the above mentioned item for each of the issued certificate.

Multiple certificates relating to a single period will be issued either as originals or counterparts or copies, depending on what the tax-payer requests. Each issued piece of the certificate, i.e. the original, is subject to the administrative fee at the amount of 100 CZK pursuant to entry 1, point 2, letter b) of the Tariff. If the tax-payers applies for a certificate for one period, however in several copies in the form of counterparts, only one original of the certificate will be issued subject to administrative fee at the amount of 100 CZK and other certificates will be issued in the form of counterpart, that are subject to administrative fee pursuant to part I, entry 3, letter a) of the Tariff at the amount of 15 CZK for the first page of the "package" of all required counterparts only, all other pages are subject to the amount of 5 CZK for each further page. Verification of every each page of the required counterparts or copies is pursuant to part 1, entry 4, letter a) of the Tariff subject to administrative fees at the amount of 30 CZK.

Points 4.1. and 4.2. are also used in the case of issuing „Certificates for non-contracting states“(Attachment 2).

4.3. Certificates of the Tax-payer's Residence of the Czech Republic using foreign forms

The tax-payer's residence of the Czech Republic may be certified by the tax administrator also using foreign forms that were submitted by the tax-payer provided the foreign tax administrator requires such certificates. Pursuant to section 76 of the Tax Code, the original of the foreign form as well as its translation in the Czech language are submitted by the tax-payer to the tax administrator.

In the case where the foreign form whose certification is required by the tax-payer is submitted, it is necessary that the tax-payer submit its requirement in writing including all substantial facts for assessment of the tax-payer's residence. It is possible to use recommended templates of the General Financial Directorate (Attachment 3 and 4) for this purpose. Similarly to using the Czech forms, also in the case of certifying the tax-payer's residence of the Czech Republic using foreign forms the tax administrator examines and ascertains all of the facts decisive for consideration of the tax-payer's residence.

“Permanent address in the Czech republic” of the tax-payer is being confirmed at some of the foreign forms by the tax administrator. Confirming the permanent address in the Czech Republic does not only mean that the tax-payer resides at specific address in the Czech Republic or that the address is recorded in public registers and personal identification documents, but it is confirmation of the address for tax purposes.

The certificate is usually required by foreign tax administrators e.g. for the purpose of applying tax relief in the income source country, therefore these certificates are similar in substance to the certificates of the tax-payer's residence of the Czech Republic.

4.4. Administrative Fees

The **certificate of the tax-payer's residence of the Czech Republic at forms of foreign tax administrators**, in which the data confirmed by the tax administrator (usually the permanent address confirmation) correspond to the form of the Ministry of Finance No. 25 5232 Certificate of the tax-payer's residence (Attachment 1) is subject to administrative fees. In these cases the tax administrator also collects the administrative fees as stipulated in point 4.2.

Jiří Fojtík
Director of the Section

Attachments

1. Form of the Ministry of Finance No. 25 5232 Certificate of the tax-payer's residence – version no. 10
2. Certificate of the tax-payer's residence pursuant to the Income Tax Act for non-contracting states
3. Template (application form) for issuing the certificate of the tax-payer's residence for individuals
4. Template (application form) for issuing the certificate of the tax-payer's residence for legal entities