

RESIDENT OR NON-RESIDENT?

A TAX POLICY DILEMMA^{*}

The moral justification for a state's right to tax its residents stems from the understanding that residents benefit from public services provided by the state and should therefore contribute to their funding. However, globalization, with its increased mobility and new opportunities for generating income, continually challenges the traditional concept of residency. This shift often undermines a state's claim to tax or leads to conflicting tax demands from multiple states. This role-play activity explores and illustrates this complex dilemma.

Background

Rami is a citizen of Dinaria, a (fictional) country on an island near the coasts of Alaska. Rami is single and works as a world-renowned engineer and geologist, known for his expertise in oil and gas exploration. Since 2000, he has primarily resided on gas and oil rigs in the North Sea. He only returns to land to buy equipment, for medical appointments, and to visit close friends and relatives.

At the outset of their latest oil and gas exploration endeavor in Dinarian territorial waters, a group made up of three corporations (two American and one Dutch) hired Rami to consult for them, and in so doing, he traveled to Dinaria from time to time, each visit lasting several days. During the process of building the natural gas rig facing Dinaria's shores, he also spent time there to consult and oversee the building and set-up process. Rami was paid for this work as a freelancer by one of the American companies.

The Dinarian income tax authority issued Rami an assessment for the year 2018, calculated based on his income from across the world, which totaled almost 6 million DD (Dinarian Dollars), because, in 2018 and the two years preceding, he stayed in Dinaria (primarily on rigs located in Dinaria's territorial waters) a total of 425 days, and therefore he is a Dinarian resident for tax purposes. Furthermore, the Dinarian authority verified with its counterparts in other states that no other tax authority claimed residency status for Rami in the years in question.

Rami challenged this assessment, claiming that since 2000 he has not been a resident of Dinaria. However, he was not able to identify a different primary residence and insisted that he routinely travels from rig to rig, primarily in the North Sea but also in other areas.

^{*}This role-play was developed by Nellie Munin and Yael Efron (2022) and used successfully in the Tax Law course at Zefat Academic College.

The Dinarian tax authority investigated the case and found that Rami maintains a savings account in Dinaria that he has not touched since he left; his only remaining living relative in Dinaria is an elderly aunt living in Hope, the capital of Dinaria; and that he holds a Dinarian credit card which he uses when buying food and pharmaceuticals when he leaves the rig and stays in Dinaria. Since 2005, Rami has not been insured by any national health program in Dinaria and has contributed from his salary to Dinarian public health taxes or social security. The tax authority did not find an apartment in Rami's name in any state. Rami manages bank accounts with modest amounts of money in several states, including Dinaria, and he uses several credit cards which he uses from time to time to fund his basic needs in the state he enters after leaving a rig.

Due to the complexity of the case and its wider implications, the finance minister of Dinaria appointed a public committee to examine the subject. Representatives of the relevant stakeholders are invited to the finance ministry for a hearing, after which the committee will submit its recommendations to the minister.

Instructions for conducting the Simulation:

You are responsible for one of the following groups (as assigned by your instructor):

Group 1: Rami and his legal team: arguing that he does not owe income tax in Dinaria for 2018 from his income from around the world, and, at most, is only required to pay income tax from the salary he received in Dinarian territory that year, which amounts to 50,000 DD.

Interests:

- To lessen Rami's taxable income.
- To establish a precedent for Rami's tax obligations, based on his particular lifestyle, that would apply in future tax years.

Group 2: Representatives of the Dinarian tax authority (income tax division): arguing that Rami is obligated to pay taxes in Dinaria on his worldwide income, amounting to 6 million DD in the 2018 tax year, because in that year Rami was a resident of Dinaria for tax purposes.

Interests:

- To enlarge Rami's taxable income.
- To establish a precedent for Rami's tax obligations, based on his particular lifestyle, that would apply in future tax years and to other taxpayers in similar situations.

Group 3: Representatives of the state revenue authority in the ministry of finance: considering if it is necessary to amend the national rules of tax residency, given the many cases dealing with the definition of tax residency being brought to the courts due to globalization's enhancement.

Interests:

- To ensure as much income tax as possible to fill Dinaria's coffers.
- To ensure that taxpayers won't be deterred from receiving income in Dinaria.
- To ensure that the law is as clear as possible so that collection and application will run smoothly.

Group 4: Representatives of the community of international businesspersons in Dinaria.

Interests:

- To ensure that the suggested tax policy will not discourage Dinarian international experts from sharing their expertise and assisting the development of Dinarian businesses, causing a “brain drain” in Dinaria.
- To the extent possible, to persuade the state to offer attractive taxation terms to such experts, to promote their interest in cooperating with local industries.

Group 5: Representatives of the community of local businesspersons in Dinaria: supporting the tax authority’s stance and alerting the relevant groups that deviating from said policy could lead to frustration and feelings of discrimination amongst them, seeing as they find themselves bearing the burden of funding infrastructure and services that Dinarians running international businesses also enjoy.

Interests:

- To ensure that the Dinarian business community won’t bear too heavy a tax burden while Dinarian businesspersons engaging in international dealings evade taxes, even though they enjoy the same business environment that facilitates their income.
- To the extent possible, to limit the competition from said parties and promote the livelihood of the local business community.

Group 6: The public committee mandated with making recommendations to the finance minister.

The committee must consider the following questions:

- What is the proper balance between the interests of each side regarding the definition of residency for tax purposes?
- Is amending the law necessary for reaching a better balance or clarifying the rules?
- If the answer is no – on what basis?
- If the answer is yes – what is the suggested change in the tax residency rules and on what basis?

The assignments for each interest group:

- 1) You must establish a legal argument that supports the position of the group you represent, relying on sources that you find independently.
- 2) You must formulate a negotiation strategy with the other interest groups and a strategy for presenting your group’s argument before the Public Finance Committee.

The assignments for the public committee (Group 6):

After receiving the written arguments from the members of each group, you must formulate questions for oral argument, and afterward formulate a well-based decision regarding the proposed legislation.

