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# Instruments Stimulating Taxpayers to Transfer Their Tax Residence to the Republic of Poland<sup>2</sup>

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## Abstract

The purpose of this article is to present two tax preferences, in force from 1 January 2022, dedicated to taxpayers transferring their residence to Poland. Their way of design is an incentive to become a Polish tax resident, and their introduction to Polish income tax is justified by both economic and demographic reasons. The first of the instruments is a lump-sum tax on foreign revenue amounting to PLN 200,000, addressed mainly to natural persons with very high foreign income (high net worth individuals), who are ready to allocate significant funds for the implementation of socially beneficial projects. The second instrument stimulating the transfer of residence is the tax exemption due to the return to the country, which can be considered a type of ‘tax holiday’, as selected domestic income during the four tax years from the transfer of tax residence is subject to a limited tax exemption. The article indicates the stimulating nature of both concepts by analysing the conditions for their application in the context of a deviation from standard taxation rules. Moreover, the paper indicates that similar solutions are also applied in other countries.

**Keywords:** personal income tax, tax residence, lump-sum on foreign income, tax exemption for return to the country, special system to ‘attract’ residents.

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# Instrumenty stymulujące podatników do przeniesienia rezydencji podatkowej na terytorium RP<sup>3</sup>

## Streszczenie

Celem artykułu jest przedstawienie dwóch preferencji podatkowych obowiązujących od 1 stycznia 2022 r. dedykowanych podatnikom przenoszącym do Polski swoje miejsce zamieszkania. Ich konstrukcja ma być zachętą do stania się polskim rezydentem podatkowym, a wprowadzenie do polskiego podatku dochodowego uzasadniane jest zarówno względami ekonomicznymi, jak i demograficznymi. Pierwszym z instrumentów jest ryczałt od przychodów zagranicznych wynoszący 200 000 zł, którego adresatami są głównie osoby fizyczne uzyskujące bardzo wysokie dochody zagraniczne (*high net worth individuals*), gotowe do przekazania znacznych środków na realizację przedsięwzięć pożytecznych społecznie. Drugi instrument stymulujący do przeniesienia rezydencji to tzw. zwolnienie powrotowe, które uznać można za rodzaj „wakacji podatkowych”, jako że limitowanemu zwolnieniu od podatku podlegają wybrane przychody krajowe w okresie czterech lat podatkowych od przeniesienia rezydencji podatkowej. W artykule wskazano na stymulacyjny charakter obu konstrukcji poprzez dokonanie analizy warunków ich stosowania w kontekście odstępstwa od standardowych zasad opodatkowania. Ponadto w pracy zasygnalizowano, że podobne rozwiązania znajdują zastosowanie także w innych państwach.

**Słowa kluczowe:** podatek dochodowy od osób fizycznych, rezydencja podatkowa, ryczałt od zagranicznych przychodów, zwolnienie dla zmieniających rezydencję (powrotowe), specjalny system „przyciągania” rezydentów.

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## Introductory Remarks

Recent years have shown increasing international mobility of persons that may result from a wide variety of reasons, for instance, a more favourable political and economic environment or new business opportunities. Some countries have responded to this new trend by expanding their legal systems with special tax regimes for persons who transfer their tax residence there. These measures aim to attract capital and stimulate investment, local tourism and consumption, thus boosting the economy, but may also constitute a response to the worsening demographic problems.

Poland has also introduced innovative legal and tax solutions designed to create attractive tax rules for persons transferring their tax residence to this country. In terms of taxation, this issue relates to the establishment and change of tax residence, the mechanism and consequences of which are of interest to the doctrine of international tax law<sup>4</sup> and the practice of applying tax law.<sup>5</sup> The change of tax residence constitutes the common denominator for the concepts presented in the following article. The paper aims to address two different solutions applicable as of 1 January 2022, which serve as instruments stimulating the transfer of residence to Poland, and to identify similar solutions in force in other countries. In this context, particular attention has been paid to the change in the approach of the tax legislator to the classic rules of international tax law applicable to non-residents transferring their tax residence. The study is based on the dogmatic analytical method and, to the extent necessary, the comparative legal method.

<sup>4</sup> S. Kamal, *Individual Tax Residence*, London 2011, pp. 7 ff.; G. Maisto (ed.) *Residence of Individuals Under Tax Treaties and EC Law*, Amsterdam 2010, passim; R. Lipniewicz, *Rezydencja podatkowa osób fizycznych a swobody rynku wewnętrznego Unii Europejskiej*, "Europejski Przegląd Sądowy" 2016, 3, pp. 10 ff.; B. Kucia-Guściora, *Ustalenie i zmiana rezydencji podatkowej – skutki dla osób fizycznych*, "Krytyka Prawa" 2019, 4, pp. 182–209.

<sup>5</sup> For instance, judgment of the Supreme Administrative Court in Warsaw of 16 April 2013, ref. No. II FSK 1658/11; judgment of the Voivodship Administrative Court in Rzeszów of 24 November 2016, ref. No. I SA/Rz 798/16; judgment of the Voivodship Administrative Court in Gdańsk of 9 June 2020, file ref. I SA/Gd 2224/19; judgment of the Voivodship Administrative Court in Gliwice of 5 June 2019, file ref. I SA/Gl 185/19; judgment of the Supreme Administrative Court of 29 April 2021, ref. No. II FSK 2241/20 – the judgments are available in the Database of Administrative Courts' Judicial Decisions (CBOSA); individual interpretation of 7 September 2022, ref. No. 0112-KDIL2-1.4011.628.2022.2.DJ; individual interpretation of 5 September 2022, file ref. 0114-KDIP3-2.4011.635.2022.3.MN; individual interpretation of 2 August 2022, ref. No. 0114-KDIP2-1.4011.403.2022.2.MR – the interpretations have been published at <http://sip.mf.gov.pl/> (access: 26.10.2022).

## Lump-Sum Tax on Foreign Income: An Incentive for the Richest?

A new and innovative solution, which has not been applied in the Polish personal income tax to date, is a lump-sum tax on foreign income of persons transferring their residence to the territory of the Republic of Poland (hereinafter referred to as the lump-sum tax on foreign income).<sup>6</sup> The novel taxation rules are addressed to a selected group of potential taxpayers, including persons interested in transferring their tax residence to the Republic of Poland. In order to benefit from this form of taxation, it is necessary to meet several prerequisites.<sup>7</sup>

The first condition highlights formalism and the right to choose the lump-sum tax. The regulations stipulate that a taxpayer who intends to take advantage of the lump-sum tax must declare that they select this form of taxation to the tax authority, in accordance with the template, by the end of January of the year following the tax year in which they transferred their residence to the territory of the Republic of Poland. The declaration submitted by the taxpayer is applicable to the entire period subject to lump-sum taxation.

The second condition indicates that the prerequisite of change of residence must be met. The taxpayer must not have resided in the territory of the Republic of Poland for five of the six tax years immediately preceding the tax year in which they transferred their residence to this country. This fact must be confirmed by a certificate of residence or other evidence documenting residence for tax purposes during the indicated period. Such a document should be attached to the declaration. Similar solutions in force in other countries also require 'absence of residence' during a certain period. In Italy, this applies to 9 out of 10 prior tax years,<sup>8</sup> while in Greece it applies to 7 out of 8 tax years preceding the change of residence.<sup>9</sup> In comparison, Polish regulations impose more lenient requirements.

The justification for the draft act indicates that the target recipients of these solutions include taxpayers with a high level of assets who are willing to locate

<sup>6</sup> Article 1(61) of the Act of 29 October 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act and several other acts (Dz.U. / Journal of Laws of 2021, item 2105), hereinafter referred to as the Act amending the PIT Act.

<sup>7</sup> Article 30(j) of the Act of 26 July 1991 on Personal Income Tax (consolidated text of Dz.U. / Journal of Laws of 2021, item 1128), hereinafter referred to as the PIT Act.

<sup>8</sup> J. Stanley-Smith, *The Italian Resident Non-dom Regime*, "International Tax Review" 17.01.2017, <https://www.internationaltaxreview.com/article/2a68xiooeku4sjhsxssg0/the-italian-resident-non-dom-regime> (access: 24.10.2022).

<sup>9</sup> M. Tountas, *Greece Introduces an Attractive Tax Status for Foreign High Net-Worth Individuals*, "International Tax Review" 11.02.2020, <https://www.internationaltaxreview.com/article/2a6a4ynkdzu2frfxde1hc/greece-greece-introduces-an-attractive-tax-status-for-foreign-high-net-worth-individuals> (access: 24.10.2022).

them on the territory of Poland in socially useful undertakings. Tax incentives are designed to create a competitive tax environment that prompts this group of taxpayers to relocate their tax residence to Poland.<sup>10</sup> Similar motives accompanied the introduction of the concept of preferential non-dom status for high net-worth individuals (HNWI)<sup>11</sup> in other countries, such as Switzerland,<sup>12</sup> Greece, Portugal<sup>13</sup> and Italy.<sup>14</sup> Apart from offering tax privileges, some countries also facilitate the acquisition of citizenship,<sup>15</sup> including Bulgaria, Cyprus and Malta.<sup>16</sup>

The subject of taxation covers undefined 'foreign income', understood as an income obtained outside the territory of the Republic of Poland in a given tax year. It does not, however, include revenue subject to the tax on income of a controlled foreign company (CFC).<sup>17</sup> Therefore, it is possible to conclude that the scope of revenues subject to lump-sum taxation is very broad and may include both income resulting from the taxpayer's foreign activity and passive foreign income. This conclusion is confirmed by tax authorities, which indicate that the concept applies not only to income from the taxpayer's activities but also to traditional financial instruments, in particular shares, shares in investment funds, participation titles in collective investment institutions, bonds, exchange-traded instruments of the ETF type, as well as crypto-assets, for instance, virtual currencies. The authorities

<sup>10</sup> Justification to the Government's draft Act amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts (Sejm Paper No. 1532, pp. 50 ff.), hereinafter referred to as the justification to the draft Act amending the PIT Act.

<sup>11</sup> R.H.M.J. Offermanns, R. Botelho Moniz, *Special Tax Regimes for High Net Worth Individuals*, "European Taxation" 2020, 60(8), pp. 365–369; A. Majdańska, C.O. Migai, M. Ołowska, *High-Net-Worth Individuals: The Challenge for Tax Administrations, Financial Intelligence Units and Law Enforcement Agencies*, "Bulletin for International Taxation" 2018, 72(10), pp. 595–606.

<sup>12</sup> It is worth noting that Switzerland uses a separate taxation model for HNWI, namely the expenditure-based taxation (lump-sum taxation, tax deals). See: E. Baselgia, I.Z. Martínez, *Tracking and Taxing the Super-Rich: Insights from Swiss Rich Lists*, "CESifo Working Paper" 2022, No. 9778; OECD Report, *Engaging with High Net Worth Individuals on Tax Compliance*, <https://doi.org/10.1787/9789264068872-en> (access: 22.10.2022); B. Zwahlen, J. Merhai, *Clarification of Lump-Sum Taxation in Switzerland*, "Bulletin for International Fiscal Documentation" 2003, 57(7), pp. 289–294; J-B. Eckert, F. Ponce, *Swiss Lump-Sum Tax Regime: Applicable Rules and Political Outlook*, "Tax Planning International" 2012, 14(7), pp. 10–12.

<sup>13</sup> In Portugal, tax privileges on foreign income are available to strictly defined categories of professions, provided that the country of origin of such income is bound by a double taxation treaty with Portugal (the so-called preferential tax regimes). J.A. Fernandes, A.G. Pereira, *Portugal's New Nonhabitual Resident Tax Regime*, "Tax Notes International" 2009, 56(5), pp. 377–379.

<sup>14</sup> P. Ludovici, *Italy's New Incentives to Attract High-Net-Worth Individuals*, "Tax Notes International" 2017, 85(11), pp. 1003–1006; F. Capitta, *Italy's Special Substitute Tax Regime for New Residents*, "Tax Notes International" 2018, 91(7), pp. 709–715.

<sup>15</sup> A. Scherrer, E. Thirion, *Citizenship by Investment (CBI) and Residency by Investment (RBI) Schemes in the EU State of Play, Issues and Impacts*, Brussels 2018, [https://www.imidaily.com/wp-content/uploads/2018/10/EPRS\\_STU2018627128\\_EN.pdf](https://www.imidaily.com/wp-content/uploads/2018/10/EPRS_STU2018627128_EN.pdf) (access: 21.10.2022).

<sup>16</sup> S. Balzan, *The High Net Worth Individuals Residency Regime in Malta*, "Tax Planning International" 2011, 13(9), pp. 14–16.

<sup>17</sup> Article 30(f) of the PIT Act.

further point out that the mere transfer of funds to a 'Polish' bank account does not affect the manner in which the disposal of foreign assets is taxed and thus constitutes a tax-neutral operation.<sup>18</sup>

With respect to foreign solutions, the catalogue of income is usually broad, including revenue from land and buildings located abroad; capital gains paid from abroad or by non-residents; income from employment earned abroad; income from self-employment resulting from activities carried out abroad on a permanent basis; income from business activities carried out by permanent organisations abroad; capital gains from the sale of investments in resident companies for a consideration; other income from activities carried out abroad and from assets located abroad. Some countries – for instance, Portugal and Spain – provide for a lump-sum tax only on income from selected categories of professional activity (directors, managers, artists, sportsmen and sportswomen, doctors, dentists, university teachers, engineers etc.). In Italy, this includes pensioners transferring their residence to certain regions.<sup>19</sup>

According to Polish legislation, foreign income is not aggregated with other revenue subject to personal income tax. Furthermore, it is not subject to disclosure in tax returns and tax books. However, the taxpayer is obliged to possess evidence necessary to establish the origin, amount and period during which they obtained foreign income. The distinction of this form of personal income taxation is emphasised by indicating that foreign income is subject to a special, separate tax regime. Foreign income and preferred expenditure do not constitute grounds for inclusion in tax-deductible expenses and any form of a deduction from income, revenue, tax base and tax, including the deduction of social security contributions paid by the taxpayer on income covered by a lump-sum tax and the use of tax relief within the meaning of the tax legislation.

Taking into account the theory of taxation, it is necessary to note that the concept in question takes the form of a classic lump sum,<sup>20</sup> which abandons the establishment of an individualised tax base, relieves the taxpayer of the obligation to document their economic activity with books and tax returns, as well as applies

<sup>18</sup> Individual interpretation of 13 July 2022, ref. No. 0115-KDIT1.4011.298.2022.1.MR; individual interpretation of 13 May 2022, ref. No. 0113-KDIPT2-1.4011.67.2022.1.RK, published at [www.sip.mf.gov.pl](http://www.sip.mf.gov.pl) (access: 26.10.2022).

<sup>19</sup> E. Flamant, S. Godar, G. Richard, *New Forms of Tax Competition in the European Union: An Empirical Investigation*, Report No. 3, Eu-Tax 2021, <https://halshs.archives-ouvertes.fr/halshs-03461688> (access: 22.10.2022).

<sup>20</sup> R. Mastalski, *Prawo podatkowe*, Warszawa 2006, p. 450; K. Wojewoda-Buraczyńska, *Istota uproszczonych form opodatkowania dochodów osób fizycznych*, "Studia Iuridica Lublinensia" 2010, 13, pp. 273–281.

only to a certain category of taxpayers.<sup>21</sup> The exception to the generally applicable rules requires the prior fulfilment of the conditions indicated in the legislation by the taxpayer.

The amount of the lump-sum tax on foreign income amounts to PLN 200,000 per annum and does not depend on any factors indicating any relationship between the amount of the lump-sum tax and foreign income or external factors determining the amount of the lump-sum tax set in such a manner. The amount of the annual lump-sum tax is affected only if the taxpayer transfers their residence to the territory of the Republic of Poland in the course of the tax year. In such a case, the amount of the lump-sum tax is determined proportionally to the number of months during which the taxpayer was subject to unlimited tax liability in that tax year. Apart from the simplified method of determining the lump-sum tax, the mode of payment of this tax is also simple. Rather than calculating and making advance tax payments, the taxpayer is required only to settle the tax in a single payment by 30 April of the following tax year.<sup>22</sup>

It is worth noting that similar solutions are applicable as of 2017 in Italy and as of 2019 in Greece, except that the lump-sum tax amount is EUR 100,000.<sup>23</sup> In both countries, the tax payment is made on the due date of the annual tax return.

An element necessary to enable the application of the lump-sum tax on foreign income in Poland is the taxpayer's obligation to incur socially beneficial expenses of at least PLN 100,000 for economic growth, the development of science and education, the protection of cultural heritage or the promotion of the physical culture in the tax year immediately following the tax year in which the taxpayer transferred their residence to the territory of the Republic of Poland. The Minister of Finance has defined the types of expenses in detail in a Regulation.<sup>24</sup>

The first out of two indicated types of expenses includes donations to non-governmental organisations or entities conducting activities for the public benefit listed in the Act,<sup>25</sup> made for strictly defined purposes: maintenance and dissemination of national tradition, cultivation of Polish identity and development of national, civic and cultural awareness; activities supporting economic development, including

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<sup>21</sup> R. Zieliński, *Ewolucja zasad ryczałtowego opodatkowania dochodów osób fizycznych*, "Krytyka Prawa" 2016, 8(3), pp. 187–209.

<sup>22</sup> Article 30(1) of the PIT Act.

<sup>23</sup> G. Cipollini, G. Vaselli, *Benvenuto in Italia!*, "Tax Adviser" 2017, 4, pp. 14–16. <https://www.taxadviser-magazine.com/edition/4262> (access: 22.10.2022).

<sup>24</sup> Regulation of the Minister of Finance of 23 December 2021 on the Types of Expenses Entitling to the Right to Lump-Sum Taxation of Income Earned Outside the Territory of the Republic of Poland by Persons Transferring Their Residence to the Republic of Poland (Dz.U. / Journal of Laws, item 2443).

<sup>25</sup> Article 3(3) of the Act of 24 April 2003 on Public Benefit Activities and Volunteering (consolidated text, Dz.U. / Journal of Laws of 2022, item 1327, as amended), hereinafter referred to as the PBA Act.

the field of entrepreneurship; activities supporting the advancement of technology, invention and innovation as well as the dissemination and implementation of new technical solutions in economic practice; science, higher education, education, education and upbringing; culture, art, protection of cultural assets and national heritage; support and dissemination of physical culture.<sup>26</sup> The second is expenditure incurred to fund selected expenses. Costs that allow the taxpayer to use the relief for supporting sport, culture and education indicated in the Personal Income Tax Act<sup>27</sup> have exceptions set out in the Regulation. In addition, the entitlement to the lump-sum tax applies to taxpayers who have incurred expenses in the aforementioned amount for the acquisition of an immovable monument<sup>28</sup> entered in the register of monuments, provided that the taxpayer will remain the owner of this monument continuously for two years from the date of its acquisition, as well as care of the immovable monument entered in the register.<sup>29</sup> Preferred expenditure may also be incurred in relation to the purchase of shares in an alternative investment company if the taxpayer holds the shares continuously for two years from the date of their purchase. In any case, the expenses indicated above cannot be reimbursed to the taxpayer in any form.

If in a given year, the taxpayer incurs expenses specified in the Act that exceed PLN 100,000, then the excess is subject to inclusion in subsequent tax years. Preferred expenses may also be incurred in foreign currencies, subject to the general rules of currency exchange.<sup>30</sup> The taxpayer is obliged to provide the tax authority with a written declaration indicating that the expenses were incurred and documents confirming their payment by the end of January of the year following the relevant tax year.

It is worth noting that the solutions regarding the separate taxation of foreign income applied in other countries also provide for the incurring of certain expenses as a conditional element. This is the case, for instance, in Greece, where it is necessary to invest EUR 500,000 in, inter alia, property, securities or shares in Greek entities.<sup>31</sup>

The law specifies the maximum period of lump-sum taxation on foreign income, which amounts to 10 consecutive tax years, counting from the tax year in which the taxpayer transferred their residence to the territory of the Republic of Poland.

<sup>26</sup> Article 4(1), points 4, 11, 12, 14, 16 and 17 of the PBA Act.

<sup>27</sup> Article 26(ha) of the PIT Act.

<sup>28</sup> See Article 3(2) of the Act of 23 July 2003 on the Protection and Maintenance of Monuments (Dz.U. / Journal of Laws of 2021, item 710 and 954), hereinafter referred to as the PMM Act.

<sup>29</sup> See Article 5(1) or (2) of the PMM Act.

<sup>30</sup> Article 11(a)(2) of the PIT Act.

<sup>31</sup> A. Scherrer, E. Thirion, op. cit.



However, the taxpayer may formally or *de facto* lose the right to use the lump-sum tax, and both situations differ in terms of time when the right to use the lump-sum tax is lost. In the first case, it takes place by submitting to the tax authority a declaration of resignation from the lump-sum tax by the end of January of that tax year, with effect from the beginning of the tax year. In the second, it occurs at the end of the tax year preceding the year in which the taxpayer transferred their residence outside the territory of the Republic of Poland, or for which they did not pay all or part of the lump-sum tax on time, or in which they did not incur the preferred expenses.

In Greece, Italy and Portugal, the eligibility for lump-sum taxation is set at a maximum period of 15 years from the first year of application and, similarly to Poland, can be withdrawn at any time. Resignation from this option makes it impossible to use it again in the future.<sup>32</sup>

Both in the aforementioned foreign tax systems and the Polish lump-sum tax scheme under review, special rules and a reduced lump sum apply to family members of the taxpayer. In Poland, a lump sum of 100,000 per tax year may be used by family members of the taxpayer transferring residence to the Republic of Poland,<sup>33</sup> with no obligation to incur preferential expenses. In Greece, this amount is EUR 20,000, while in Italy – EUR 25,000. Poland has introduced a regulation according to which, if a taxpayer has lost the right to the lump-sum tax in certain circumstances, a member of the taxpayer's family also loses the right to the lump-sum tax under the same rules as the taxpayer. However, in the event of the death of the taxpayer or the loss of the status of a member of the taxpayer's family, the lump sum of a member of the taxpayer's family will be PLN 200,000 per tax year as of the tax year immediately following the tax year in which these circumstances occurred. In such a case, the taxpayer's family member is also obliged to pay preferred expenses.

Due to the limited circle of persons to whom the lump-sum tax on foreign income is addressed, the investment restrictions and the significant amount of the lump sum, it should be assumed that, as in other countries using similar regulations, this formula will apply only to a few selected high net-worth individuals (HNWI). In fact, this was taken into account during the implementation of the regulations due to the number of Polish taxpayers with the highest incomes and the experience of other countries, where quantitatively these numbers were not high (e.g. 160 persons in Italy) but yielded quite a high budget revenue. Other non-tax aspects, including climate conditions, also play a significant role in the selection of the

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<sup>32</sup> N. Saccardo, *Italy's Tax Regime for Individuals Transferring Their Residence*. <https://www.internationaltax-review.com/article/2a68xiooeku4sjjipjzls/italys-tax-regime-for-individuals-transferring-their-residence> (access: 21.10.2022).

<sup>33</sup> According to the Act, family members are a spouse and a child, as referred to in Article 27(f)(1) of the PIT Act.

country to which the residence is transferred, which is why, after taking the above into account, it is difficult to judge the popularity of the discussed solution in Poland.

It is important to emphasise that the application of a lump-sum tax on foreign income is, in fact, a departure not only from the general rules of taxation but also from the principles of taxation of foreign income in accordance with the provisions of international tax law. This is reflected in the lack of determination of the resident's worldwide income and, consequently, in the non-application of the rules preventing double taxation, i.e., the tax credit method taking into account tax paid abroad or the exclusion method based on the tax exemption on foreign income. It should be mentioned that, in practice, taxpayers with foreign income should have a thorough understanding of their tax and legal status, as tax benefits can be specified only on an individual basis.

### Tax Exemption due to the Return to the Country as *Sui Generis* 'Tax Holiday'

A separate instrument stimulating the transfer of tax residence in force since 1 January 2022 is tax exemption on certain income earned in Poland by foreign-born and raised descendants of Polish citizens.<sup>34</sup> The exemption is available to a taxpayer who, as a result of the transfer of residence to the territory of the Republic of Poland, is subject to unlimited tax liability in this country.<sup>35</sup> The establishment of this condition in practice requires determining that the tax residence was relocated to Poland and indicating when and from which country this relocation occurred. The time of the transfer of residence is crucial, as the current practice of the law application suggests, which is not synonymous with the time when, under Polish law, the taxpayer is subject to unlimited tax liability. Polish tax authorities indicate that the exemption in question applies to taxpayers who have transferred their residence to the territory of the Republic of Poland after 31 December 2021.<sup>36</sup> At the same time, they refuse to grant the right to the exemption to taxpayers who relocated to Poland before 1 January 2022, even if it is possible to establish the residency in accordance with the rules set out in the Act and international agreements only after that date, for example, taking into account 183 days of residence.<sup>37</sup>

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<sup>34</sup> Article 21(1)(152) of the PIT Act.

<sup>35</sup> Article 3 of the PIT Act.

<sup>36</sup> Article 1(12)(a) of the Act amending the PIT Act.

<sup>37</sup> Individual interpretation of 1 September 2019, case ref. 0115-KDIT3.4011.454.2022.5.PS, individual interpretation of 23 August 2022, ref. No. 0114-KDIP2-1.4011.525.2022.1.PP, individual interpretation

Therefore, the entitlement to the exemption depends not only on the mere fact of a change of residence, but on the timing of the relocation resulting in this change in the long term.<sup>38</sup>

To benefit from the exemption, it is necessary to confirm the non-resident status prior to the relocation to the Republic of Poland. The Personal Income Tax Act indicates that the potentially exempt person must have held the non-resident status for three calendar years immediately preceding the year in which they transferred their residence to the Republic of Poland and the period from the beginning of the year in which they relocated to Poland to the day preceding the day on which they changed their place of residence to the Republic of Poland.<sup>39</sup>

The right to apply for the exemption also requires the fulfilment of alternative prerequisites relating to Polish citizenship, the status specified in the Act, or the possession of a place of residence in the indicated countries for a specified period before the change of residence. The exemption can be used by a taxpayer with Polish citizenship,<sup>40</sup> the Pole's Card<sup>41</sup> or citizenship of an EU Member State or a country belonging to the European Economic Area or the Swiss Confederation other than the Republic of Poland. Instead of confirming the citizenship, it is possible to indicate a foreign place of residence in strictly defined countries, or in Poland, at a specified time. The first option requires the need to confirm that the taxpayer has been a resident of a Member State of the European Union or a state of the European Economic Area, the Swiss Confederation, Australia, the Republic of Chile, the State of Israel, Japan, Canada, the United Mexican States, New Zealand, the Republic of Korea, the United Kingdom of Great Britain and Northern Ireland or the United States of America for a period of at least three years. The second option consists in proving that the taxpayer has resided in the territory of the Republic of Poland continuously for at least five calendar years preceding the three-year period of residence abroad.

The confirmation of tax residence should be made by means of a certificate of residence<sup>42</sup> or its copy.<sup>43</sup> However, other evidence documenting tax residence for

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of 28 April 2022, ref. No. 0114-KDIP2-1.4011.206.2022.2.PD, individual interpretation of 16 February 2022, case ref. 0115-KDIT2.4011.27.2022.1.ENB – published at <http://sip.mf.gov.pl> (access: 26.10.2022).

<sup>38</sup> M. Pogroszewska, *Kto za wcześniej wrócił do kraju, nie skorzysta z ulgi*, "Rzeczpospolita" 1.06.2022, <https://www.rp.pl/podatki/art36421451-kto-za-wczesnie-wrocil-do-kraju-nie-skorzysta-z-ulgi> (access: 21.10.2002).

<sup>39</sup> Article 21(43)(2) of the PIT Act.

<sup>40</sup> Act of 2 April 2009 on the Polish Citizenship (consolidated text, Dz.U. / Journal of Laws of 2022, item 465).

<sup>41</sup> Act of 7 September 2007 on the Pole's Card (Dz.U. / Journal of Laws of 2019, item 1598, as amended).

<sup>42</sup> Article 5(21) of the PIT Act. See: J. Kiszka, *Funkcja, forma i zasady stosowania certyfikatu rezydencji – niektóre problemy praktyczne*, "Doradztwo Podatkowe" 2018, 4, pp. 15–21.

<sup>43</sup> Article 41(9)(e) of the PIT Act.

the period necessary to establish whether a given taxpayer is entitled to the exemption is admissible as well. In view of the formal requirements of the certificate, it appears reasonable and beneficial to the taxpayer to allow documentation of tax residence by means of other evidence. The taxpayer is further required to confirm that they have not previously benefited from the exemption in its entirety or part.

Exemptions apply to income earned by a taxpayer who has transferred their residence to the territory of the Republic of Poland and cover the amount up to PLN 85,528 in a tax year, earned from four statutorily indicated sources: service relationship, employment relationship, home-based work and cooperative employment relationship;<sup>44</sup> contracts of mandate;<sup>45</sup> non-agricultural economic activity<sup>46</sup> (taxed on a general basis,<sup>47</sup> the so-called flat-rate tax,<sup>48</sup> tax on income from qualified intellectual property rights<sup>49</sup> and lump-sum tax on registered income<sup>50</sup>). A fourth source introduced in the course of the tax year<sup>51</sup> is income from maternity benefits.<sup>52</sup> This refers to income earned after the relocation. The justification for the Act does not address the criteria for selecting the above-mentioned sources of revenue. However, it appears that the incentive to return to Poland in the form of a tax exemption is designed for professionally active taxpayers deriving income mainly from their own work or maternity benefit.

The exemption is applied within a strictly defined time frame – four consecutive tax years. Therefore, the concept of the exemption is a kind of ‘tax holiday’ for selected types of income. There are two ways to determine the duration of the exemption. First, the taxpayer is entitled to the exemption for four consecutive tax years, counting from the beginning of the year in which the taxpayer transferred the residence to the territory of the Republic of Poland. Second, they may start benefitting from the exemption from the beginning of the following year. Such an alternative allows the taxpayer to choose the most favourable option.<sup>53</sup> It is possible to take advantage of the preferences already at the stage of advance tax payments

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<sup>44</sup> Article 12 of the PIT Act.

<sup>45</sup> Article 13 point 8 of the PIT Act.

<sup>46</sup> Article 14 of the PIT Act.

<sup>47</sup> Article 27 of the PIT Act.

<sup>48</sup> Article 30(c) of the PIT Act.

<sup>49</sup> Article 30(ca) of the PIT Act.

<sup>50</sup> Act of 20 November 1998 on Lump-Sum Tax on Certain Income Earned by Natural Persons (consolidated text, Dz.U. / Journal of Laws of 2021, item 1993, as amended).

<sup>51</sup> Article 21(1)(152)(d) added by Article 1(6)(a), the third tier of the Act of 9 June 2022 amending the Personal Income Tax Act and several other acts (Dz.U. / Journal of Laws of 2022, item 1265).

<sup>52</sup> Articles 29–31 of the Act of 25 June 1999 on Cash Benefits from Social Insurance in Case of Illness and Maternity (Dz.U. / Journal of Laws of 2022, item 1732).

<sup>53</sup> See: Justification to the draft Act amending the PIT Act, p. 25.

collected by the payer.<sup>54</sup> Therefore, it is important to specify the date on which the exemption was used, as in the declaration on the fulfilment of conditions necessary to apply for the exemption submitted to the payer, the taxpayer also indicates the year of commencement and termination of the exemption. The payer applies the exemption no later than the month following the month in which the entity received the declaration, no longer than the deadline indicated by the taxpayer.<sup>55</sup>

It should be added that the application of the exemption for four consecutive years excludes the re-use of this option. If during the period of 'tax holiday', the taxpayer changes their residence again, as a result of which they become a Polish tax resident, the taxpayer will not be able to apply the discussed concept (regardless of the amount of the previously applied exemption) on account of the transfer of residence to the territory of the Republic of Poland.<sup>56</sup>

The exemption is restricted by an annual limit, which for the sum of the above-mentioned revenue is PLN 85,528.<sup>57</sup> However, this threshold applies to three other separate exemptions cumulatively<sup>58</sup> and, in the event of convergence of exemptions, it may not necessarily be beneficial for the taxpayer. It should also be added that when calculating the amount of income subject to an exemption, no account is taken of income subject to lump-sum tax (dividends, interest) or exempt from income tax and from which tax collection was abandoned under the provisions of the tax legislation.<sup>59</sup> An additional aspect is an impact on the limit of tax exemption for return to the country and other tax-deductible expenses. In the case of application of the exemption<sup>60</sup> with regard to revenue from a service relationship, employment relationship, home-based work and cooperative employment relationship, the sum of the total costs of obtaining income from the so-called copyright, calculated as 50% of revenue, and revenue exempt from tax under the four newly introduced exemptions, including the ones discussed in the paper,<sup>61</sup> with regard to revenue from a service relationship, employment relationship, home-based work and cooperative employment relationship, may not exceed the amount constituting the upper limit of the first bracket of the tax scale, i.e. PLN 120,000, in a tax year.<sup>62</sup>

<sup>54</sup> See also: M. Krzyżkowska, *Polski Ład – ulgi podatkowe*, "Monitor Podatkowy" 2022, 1, p. 19.

<sup>55</sup> Article 41(11)(a) of the PIT Act.

<sup>56</sup> Justification to the draft act amending the PIT Act, p. 24.

<sup>57</sup> Article 21(44) of the PIT Act.

<sup>58</sup> Article 21(1), points 148, 153, 154 of the PIT Act.

<sup>59</sup> Article 21(39) of the PIT Act.

<sup>60</sup> Article 21(1)(152)(a) of the PIT Act.

<sup>61</sup> Article 21(1), points 148(a), 152(a), 153(a) and 154 of the PIT Act.

<sup>62</sup> Article 22(9)(a) of the PIT Act.

Solutions based on limited exemptions for persons changing tax residence (the so-called special expats) are also used in other countries. In Cyprus, they have two forms and they also apply to those who have transferred tax residence. First, 50% of the income earned in Cyprus during a period of 10 years is exempt, as long as it exceeds EUR 100,000;<sup>63</sup> second, 20% of the remuneration for any work performed in Cyprus is exempt for a period of five years until 2025, with an exemption limit of EUR 8,550 per year. Similarly, in France, the 'impatriation bonus' is applied, amounting to 30% of the income earned in France after the taxpayer's relocation, up to a maximum of 50% of the taxpayer's total salary income.<sup>64</sup> Under French law, only employees transferring their residence because of commencement of work in connection with the relocation of a French employer can take advantage of it, it does not apply to a change of residence on one's own initiative.<sup>65</sup> In Spain, the preference popularly known as Lex Beckham<sup>66</sup> is applied, which is based on the introduction of a lower (24%) than the standard (42%) tax rate, applicable only to Spanish income within the limit of EUR 600,000. The first version of the Spanish preference concerned footballers; similarly, some countries create special tax regimes for foreign specialists, which is sometimes referred to as brain drain.<sup>67</sup>

## Conclusions

The instruments that stimulate the transfer of tax residence to the territory of the Republic of Poland discussed in the article are, in a sense, in line with the tendency to 'attract' tax residents also to the territories of other countries. However, both of the presented concepts depart from the standard taxation rules and the effects of the general application of the residence principle based on unlimited tax liability resulting from the international tax law. The tax legislator abandons the far-reaching rule of taxation of a resident's foreign-earned income in favour of either a lump-sum tax on foreign income or an exemption of domestic income obtained in Poland

<sup>63</sup> An extension to 17 years is planned, with an income exceeding EUR 55,000. <https://phstax.com/tax/cyprus-an-attractive-destination-for-high-net-worth-individuals/> (access: 22.10.2022).

<sup>64</sup> Article 155 B du Code Général des Impôts. [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIA-RTI000037985788/](https://www.legifrance.gouv.fr/codes/article_lc/LEGIA-RTI000037985788/) (access: 21.10.2022).

<sup>65</sup> Special expatriate tax regime, [https://www.impots.gouv.fr/sites/default/files/media/1\\_metier/5\\_international/EV\\_part/0\\_transverse/fiche\\_technique\\_impatri es\\_gb.pdf](https://www.impots.gouv.fr/sites/default/files/media/1_metier/5_international/EV_part/0_transverse/fiche_technique_impatri es_gb.pdf) (access: 21.10.2022).

<sup>66</sup> A. Relaño, *The 'Beckham Law' in Reverse*, [https://en.as.com/en/2019/07/03/opinion/1562134194\\_620183.html](https://en.as.com/en/2019/07/03/opinion/1562134194_620183.html) (access: 26.10.2022).

<sup>67</sup> See P. Genschel, P. Schwarz, *Tax Competition and Fiscal Democracy*, "TranState Working Papers" 2012, 161, <https://www.econstor.eu/bitstream/10419/55857/1/687954460.pdf> (access: 21.10.2022); J.D. Wilson, *A Voluntary Brain-Drain Tax*, "Journal of Public Economics" 2008, 92(12), pp. 2385–2391; <https://www.sciencedirect.com/science/article/abs/pii/S0047272708000339> (access: 25.10.2022).

after a change of residence (tax exemption for return to the country). Those new concepts may result not only in tax savings but also, from the perspective of Poland as the country of residence, the taxpayer does not have to prove double taxation and use methods to eliminate it. Both instruments are not so much mechanisms to avoid double taxation but rather mechanisms of tax competition, which is used as a stimulus due to economic or demographic aspects. Against that background, a reasonable doubt arises as to the assessment of the presented solutions, both from the point of view of the principle of equality and tax justice and the constitutional obligation to pay public levies. Those theoretical and constitutional aspects are also signalled in the foreign doctrine of tax law.

The short period of time in which the discussed concepts have been in force in Polish tax law and the lack of practice in the application of the law in that area in Poland as well as the innovativeness of solutions in the tax systems of other countries, do not yet allow to state whether the concepts can be qualified only as instruments of stimulation within the framework of permissible tax competition or they are rather qualified to the group of tools already used under harmful tax competition.

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