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European Research Structures  
– Changes and Challenges  
Mobility of Researchers in the  
European Union

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# Basic Features of the Taxation of Guest Professors, Teachers, Scholarship Holders and Student Trainees at Home and Abroad

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## *1. Preliminary Remarks*

National reports, some of which were more detailed than others, were submitted from: Belgium (Luc Neefs), Denmark (Niels Winther-Sørensen), Germany (Rainer Prokisch), Greece (K. Finokaliotis), France (Gilbert Tixier), the Netherlands (Eric C.C.M. Kemmeren), Portugal (Manuel Pires) and Spain (Fidel Ferreras Alonso). Moreover, a brief statement was provided by the Science and Engineering Research Council, SERC (John D. Walsh).

The depiction of problems relating to fiscal law are based on the German national report. The legal provisions governing double taxation agreements are discussed by Mr. Prokisch in his report on problems relating to fiscal law (this volume). As an introduction, a few of the basic elements will now be described.

## 2. Basic Elements

According to the domestic law of the reporting countries, the tax liability of guest professors, teachers, scholarship holders, and student trainees is fundamentally based on the provisions governing the taxation of income from employment (German Income Tax Law: pursuant to section 2 [1], no. 4 in connection with section 19 Einkommensteuergesetz, EStG).

Under the legislation of all the states, an elementary distinction between taxation pursuant to the provisions governing *unlimited* tax liability and those governing *limited* tax liability must therefore be made. The most important difference in terms of fiscal law between unlimited and limited tax liability lies in the principally differing tax treatment of *resident* and *non-resident* individuals. While resident individuals are subject to unlimited tax liability within the material scope of their entire global income, non-resident individuals are subject only to the taxation of their domestic income. Accordingly, unlimited tax liability is based on domestic residence or habitual abode, although differences in the individual reporting countries do exist here. In Belgium, for example, unlimited tax liability is also based, apart from residence, on the situs of assets (*siège de la fortune*). Nevertheless, in every case and in all reporting countries, unlimited tax liability is taken as indicating the tax liability on the total domestic and foreign-source income, i.e. tax liability on the entire global income in the country of residence. However, where the taxable individual is a non-resident, the territorial linkage to the taxable individual is replaced by a territorial linkage to the *object* of taxation, i.e. the non-resident's domestic income. It follows that individuals subject to limited income tax liability, i.e. taxation of their domestic income only, are neither resident, nor have a habitual abode in the domestic territory when in receipt of domestic income liable to limited taxation. (For details regarding income from employment under German law, see section 1 [4] EStG in connection with section 49 [1], no. 4 EStG).

I would, at this early point, like to provide some additional information and specifications on the very fundamental distinction between limited and unlimited tax liability. Unlimited tax liability involving the taxation of the entire global income does not necessarily constitute a disadvantage when compared to tax liability that is restricted to domestic income. Resident taxpayers with unlimited tax liability are entitled to *net* taxation, whereas non-residents whose domestic income is liable to limited taxation are fundamentally subject to *gross* taxation. Thus, in the case of limited tax liability, income-related expenses and personal burdens, in particular family-related, are to a large extent not tax deductible. (A few exceptions are provided in favour of employees subject to limited tax liability; I will go into detail on these at a later point.)

Finally, there is the very important aspect of *concurrence* of unlimited tax liability in one country with limited tax liability in another. This case can arise if an individual resident in one given state and thus liable to unlimited

taxation there, performs or exploits work in another state and is thus subject to (limited) taxation in this state as well. Hence, the concurrence of unlimited and limited tax liability of one and the same income in both the state of residence and in the state of income source results in a situation referred to as *international double taxation*. (This subject is dealt with in detail by Mr. Prokisch in his report in this volume.)

### *3. Differences Between Unlimited and Limited Tax Liability*

#### *3.1. Elements of Unlimited Tax Liability in Regard to Guest Professors, Teachers, Scholarship Holders and Student Trainees*

*(a) Resident teachers employed at a domestic school or university:* In this entirely unproblematic case, the provisions governing unlimited tax liability are applicable without any particular exceptions. Accordingly, all earnings are subject to taxation as employment income in the country of residence. All possibilities of deducting expenses for securing subsistence and earning capacity are open to the taxpayer because of the unrestricted applicability of net taxation rules.

*(b) Teachers employed at a school or university located abroad:* As a rule, unlimited tax liability in the teacher's country of origin will cease if he or she establishes residence or habitual abode in the foreign country; under such circumstances he or she becomes subject to unlimited tax liability there. A very significant exception, however, is made if the prerequisites governing *extended* unlimited tax liability are fulfilled. This form of unlimited tax liability is deemed extended because it does not demand the existence of domestic residence or habitual abode, as in the case of »normal« unlimited tax liability. Nevertheless, only German citizens who are in an employment relationship with a domestic legal entity governed by public law and for this purpose receive a salary from domestic public funds are subject to extended unlimited tax liability, i.e. unlimited tax liability without domestic residence or habitual abode. Extended unlimited tax liability is, however, not restricted to these earnings. Rather, it will comprise the taxpayer's entire global income in the same way »normal« unlimited tax liability does. Similar provisions comparable with this form of extended unlimited tax liability also exist in Greece and in Portugal.

*(c) Students and student trainees with a spare-time job:* German fiscal law sets out particular provisions governing students in respect of unlimited tax liability on the basis of residence or habitual abode, i.e. a stay as a rule lasting longer than 183 days. Accordingly, they may retain their residence at the home of their parents if they are accommodated in a furnished room or in a students' hostel at the place of their studies – that is, if the accommodation abroad is only rented on a temporary basis and the ties to the parental home are maintained. Different provisions apply if the student has com-

pletely severed all economic ties to the parental home. In Denmark, foreign students are only subject to unlimited tax liability if their stay in Denmark lasts longer than 365 days within a period of two calendar years. In principle, there are no special provisions governing students who pursue a gainful occupation alongside their studies. In the case of part-time employment, German fiscal law permits a flat-rate determination of wage tax (section 40 a EStG).

(d) *Educational promotion or scholarships*: Financial support from public funds, for example from a public foundation, which is granted for the purpose of directly promoting educational training, science or the arts are fundamentally exempt from taxation (under German law, pursuant to section 3, no. 11 EStG). Apart from the German national report, only the Portuguese report expressly declares scholarships to be tax-exempt. By contrast, in Denmark, scholarships paid to residents, i.e. to persons with unlimited tax liability, are liable to taxation. This also applies to financial support from abroad, and obviously also to persons with limited tax liability (the Danish report refers to »non-national researchers staying in Denmark for 48 months as a maximum«). On the other hand, with very few exceptions, scholarships awarded abroad by Denmark are exempt from taxation. In the Netherlands, the provisions governing the prerequisites and the scope of tax exemption for scholarships (the regulations refer to »scholarships and stipends«) are highly complex. Decisive criteria are, *inter alia*, the organization that awards the scholarship, the location of the work to be carried out, the purpose of the work and the location of the organization granting the scholarship. Scholarships which are not covered by the special provisions governing particular grantors are liable to taxation if they have the character of regular payments; however, 95 percent of the government scholarships are apparently tax-free.

### 3.2. *Elements of Limited Tax Liability as Regards Guest Professors, Teachers, Scholarship Holders and Student Trainees*

Subject to limited tax liability in our context are primarily professors who stay in the domestic territory (host country) for a short period of time only and thus do not establish residence or habitual abode in the host country. Also subject to limited tax liability – at least from the German point of view – are students who, as cited above, fundamentally retain the residence of their parents. In our context and pursuant to German law, limited tax liability applies in particular to:

- *income from employment* carried out on domestic territory (section 49 [4] in connection with section 19 EStG), but also to
- *payments from domestic public funds* by virtue of a current or a former employment contract under public law (*inter alia*, retirement allowances and pensions).

Moreover, the *exploitation* of work on domestic territory is subject to limited tax liability (under German law see section 49 [4] EStG). This can take the form of delivery of research reports or expertise and the transfer of copyrights. Under German law, students with limited tax liability who are in dependent, training-related employment for no more than 183 days of the year are released from paying wage tax if, apart from other formal prerequisites, their taxable earnings do not exceed DM 1000 per month (section 125 [4] of the wage tax regulations – Lohnsteuer-Richtlinien, LStR – 1993).

I would now like to come back to my earlier comment regarding the possible disadvantage of limited tax liability over unlimited tax liability in respect to tax deductibility of certain expenses. Here, the German national report states that an individual who is subject to limited taxation is not entitled to an *allowance for dependent children* pursuant to section 32 (1–6) EStG, even if the child is subject to unlimited taxation. Nevertheless, by virtue of sections 50 (4) and 33 a (1) EStG, employees may deduct maintenance expenses for children subject to limited taxation. However, the joint assessment of husband and wife according to the *splitting* scale is not possible because section 26 EStG demands the unlimited tax liability of both spouses.

In Belgium, within the scope of limited tax liability, there are special provisions governing foreign scientists who work at particular research establishments in Belgium for a limited period of time. Under these preconditions, specific direct benefits granted by the employer in connection with the costs of the scientist's stay are tax-free. Under Belgian fiscal law, maintenance expenses are also deductible in the case of only limited tax liability if the beneficiary does not live in the taxpayer's household.

In Denmark, persons with limited tax liability in receipt of employment income (i.e. »non-national wage earners«) may assert increased living expenses resulting from their stay in Denmark.

Under the fiscal law of the Netherlands, there are again highly differentiated provisions governing limited tax liability. Worth mentioning here is the so-called *35 Percent-Rule*, according to which payments received by a non-resident employee from a domestic employer in the Netherlands may, on application, be exempt from taxation up to the amount of 35 percent in order to cover the special expenses incurred by the non-resident subject to limited tax liability in the Netherlands. This regulation is applicable for a period of 96 months. A *90 Percent-Rule* pays regard to the fact that, as in Germany, an individual with limited tax liability in the Netherlands basically has no possibility of asserting personal expenses as tax deductible. Under the 90 Percent-Rule, this restriction is lifted if the income subject to limited taxation in the Netherlands amounts to more than 90 percent of the individual's entire global income. Further special provisions under the fiscal law of the Netherlands are also laid down for student trainees subject to limited tax liability under the so-called »student-trainee ruling«.