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Dual domicile - tax resident - Germany

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Summary	Spørger is a German citizen and lives in Germany, but has also acquired a year-round home in Denmark, which the spouse and children have moved into. Spørger spends most of his working time in Germany, while on weekends he stays in Denmark with his family. The Tax Council confirms that Asks for the double taxation agreement between Denmark and Germany, Article 4, para. 2, letter c, is tax resident in Germany considering that Spørger has German citizenship.
Legal basis	Statutory Order no. 117 of 29/01/2016 - Withholding Tax Act BKI No 158 of 06/12/1996 - Order of the Agreement of 22 November 1995 between the Kingdom of Denmark and the Federal Republic of Germany on the avoidance of double taxation in respect of taxes on income and on capital and on taxes on estates, inheritance and property gift as well as regarding assistance in tax matters.

Reference (s)	The Withholding Tax Act, section 1, subsection 1, no. 1 The Withholding Tax Act, section 7, subsection 1 DBO between Denmark and Germany - Art. 4 pcs. 2, letter a DBO between Denmark and Germany - Art. 4 pcs. 2, letter b DBO between Denmark and Germany - Art. 4 pcs. 2, letter c DBO between Denmark and Germany - Art. 4 pcs. 2, letter d
Reference	The Legal Guide 2019-2, section **CF8.2.2.4.1.2.**

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Questions:

1. Can the Tax Council confirm that the Applicant is considered to be resident in Germany for tax purposes in the circumstances described below?

Reply:

1. Yes

Description of the actual conditions

Questioner is a German citizen. He was born in Germany, where he also lived with his spouse and their joint children. Questioner is thus fully taxable in Germany under internal German law. Questioner's business connection to Germany consists in his role as responsible partner - corresponding to a CEO - in the family business / group H1 with i.a. the companies H2 and H3, H4, which produce materials for the construction industry. Asker has a global area of responsibility in the company.

The H1 Group has more than 200 companies in more than 80 countries.

Spørger has previously (before Spørger had children) lived in Denmark in the period 2004-2010. Before and after the stay in Denmark, Spørger lived in Germany.

Spørger and his family still have their home in Germany, but Spørger and his spouse also acquired a year-round home in Denmark in 2019, which the spouse and children have moved into. Spørger's children had not previously lived in Denmark, and the move took place i.a. on the basis that Spørger's wife is Danish, and thus as part of a wish that the children should learn Danish by going to a Danish kindergarten and Danish school. It has previously been confirmed by the Danish Tax Agency that Spørger's full tax liability to Denmark would not arise based on the pattern of residence specified at the time. As Spørger expects in future to reside more in Denmark than was previously the case, it must be assumed in answering this request for a binding answer that the full tax liability to Denmark will accrue to Spørger.

It is thus requested to confirm that Spørger will be domiciled in Germany for tax purposes, cf. below.

Questioner's family is still resident in Denmark. However, the intention of the stay is not a permanent move to Denmark. The period of residence in Denmark is expected to last a few years - however, a maximum of 7 years. The purpose of the stay in Denmark is to introduce Spørger's children to Danish culture and the Danish language, as Spørger's wife is from Denmark. However, the questioner will generally continue to reside in Germany and in third countries on weekdays. Asker has most of his working time in Germany, but with a lot of travel to the US and other third countries.

Continued business and economic connection to Germany as well as housing in Germany

As the management of the H1 group is exercised from Germany, it is necessary for Spørger to continue to have its daily base in Germany. Spørger and his family have kept their home in Germany, and Spørger can be considered to live and reside in both Germany and Denmark. Questioner still has a car in Germany, a German mobile subscription and his German employment contract. Spørger is also chairman of an advisory board of an academic institution in Berlin and part of the management's seat on an advisory board for a German foundation. Asker thus maintains his usual daily life and connection to Germany, which has been built up since he was born, and has also continued with this after the family moved to Denmark.

Regardless of the fact that the family has moved to Denmark so that the children could start their Danish schooling and learn Danish, Spørger will remain resident in Germany, where Spørger will stay on weekdays and carry out his income-generating profession. In addition, as before, Spørger will also make business trips to other countries as part of its position in the German company.

It is further stated that Spørger has no role in relation to either the company H5 or the company H6, both of which are located in Denmark.

Questioner's stay on holiday and the like in Denmark

Spørger will not make work-related trips to Denmark, as Spørger's work does not have a geographical or commercial connection to Denmark. Spørger will arrange his working life in such a way that work tasks are not performed when Spørger is on holiday and weekend in Denmark, as Spørger will in principle not work on weekends.

The main purpose of Spørger's stay in Denmark is contact with spouse and children on weekends and holidays, as Spørger has no business connection to Denmark. The questioner will thus not travel to Denmark to carry out planned work in this country.

During a normal working week, the questioner will primarily stay in Germany or in third countries during the week and in Denmark during the weekend. Asker will typically travel out Monday morning and come home Friday afternoon. Questioner estimates that he approx. four times during a 12-month period will come home to Denmark on Thursday night and take time off on Friday.

Asker holds Christmas and winter holidays outside Denmark. In addition to Spørger visiting the family in Denmark on some weekends and holidays, Spørger's family will also visit Spørger in Germany. In addition to holidays in Germany, the family will also take holidays outside Denmark and Germany, for example in the holiday home in Austria.

Questioner has stated that in the coming 12-month period he expects to stay approx. 140 days in Denmark, approx. 121 days in Germany and approx. 103 days in third countries. As travel days in the statement are calculated as half days, the stay in Denmark will probably exceed the 180 days that will result in a full tax liability according to the withholding tax act, section 7, subsection. 1, as broken days after the provision are calculated as whole days.

Questioner's opinion and reasoning

It is the Questioner's view that the question should be answered with 'yes'.

In answering the question, it must be assumed that Spørger is considered fully taxable to both Germany and Denmark.

Pursuant to the double taxation agreement between Denmark and Germany (the "DBO"), Article 4, para. 2, the tax domicile of a natural person shall be determined in accordance with the following rules:

a) he shall be deemed to be a resident of the State in which he has permanent residence at his disposal; if he has permanent residence at his disposal in both States, he shall be deemed to be a resident of the State with which he has the strongest personal and economic relations (center of his vital interests);

b) if it cannot be determined in which State he has the center of his life interests, or if he does not have a permanent residence at his disposal in any of the States, he shall be deemed to be a resident of the State in which he has habitual residence;

c) if he is habitually resident in both States or if he is not a resident of either State, he shall be deemed to be a resident of the State of which he is a national.

Of the Legal Guide ("DJV") section **CF8.2.2.4.1.2** states that "[t] he natural person with a dual domicile who has a permanent residence available in both countries is considered, within the meaning of the model agreement, to be resident in the country where he or she has the strongest personal and economic connections. This is also called the center for life interests.

In this connection, emphasis is placed on:

- where the person has his family (and other social connections)
- where the person has his political cultural affiliation or other activities where the person has his place of business , the place where the person
- manages his activities etc. .

The circumstances must be judged on the basis of a whole. The fact that the person retains his residence in the country where he has always lived, where he has worked, and where he has his family and property, together with other elements may create a presumption that he has retained the center of his life interests. in this country."

As stated in the facts of the case, Spørger was born in Germany and lived there during the period 1974-2004. In the period 20042010, Spørger lived in Denmark. Since 2010, Spørger has lived in Germany. Since 2019, when Spørger together with his spouse acquired a home in Denmark, Spørger has had housing available in both Germany and Denmark.

PERSONAL AND FINANCIAL RELATIONS

It is our opinion that Spørger has his primary personal connections in Denmark, as this is where his spouse and children currently reside. However, the intention with the stay is not to settle permanently in Denmark, but in the long run to move back to Germany after a number of years in Denmark. Questioner's personal connections in Germany result in his long-term residential connection, which also means that this is where his other social networks, etc. are located.

It is our opinion that Spørger has its primary economic connections in Germany.

Questioner has acquired a property in Denmark. The property has been acquired for the purpose that the family can stay in Denmark, so that the children can become acquainted with Danish culture, including Danish schooling. Due to its position as a responsible partner in the family business / group, Spørger will be able to perform work in Denmark sporadically, but the work is aimed at Spørger's activities in Germany, and thus not at Denmark.

In Germany, Spørger works as a responsible partner - equivalent to a CEO - in the family business / group. In addition to this appointment, Spørger is also chairman of an advisory board of an academic institution in Berlin, while at the same time being part of the management of an advisory board for a German foundation.

Spørger continues to live in the family's home in Germany, just as Spørger also has his German car, his German bank account and a German mobile subscription.

Spørger's financial connection to Denmark is more or less limited to his ownership of the property, which according to the information constitutes less than one percent of Spørger's total assets, which are primarily in Germany.

IN **SKM2016.382.SR** the applicant was deemed to be a resident of the United States for tax purposes in accordance with Article 4 (1). 2, letter a, in the double taxation agreement between Denmark and the USA. The questioner in the case had been resident in the United States since 1976. In addition, the questioner was a co-owner of a company headquartered in the United States. The questioner was considered fully taxable in Denmark in connection with his acquisition of an apartment in Denmark, as the questioner's other family and many friends lived in the area where the apartment was located. The main difference between the present case and

SKM2016.382.SR is that the questioner in the referenced case did not have a spouse and children in Denmark, but had a girlfriend with whom he lived on weekends, as well as two children and three grandchildren in the United States. The questioner's personal connections to Denmark were thus not as pronounced as the questioner's in the present case.

The above circumstances, in conjunction with the presumption that a natural person maintains his center of vital interests in the country where he has always lived, where he has worked, and where he has his possessions (though - in Spørger's case - not his family), should in our opinion lead to the Asker after an overall assessment to be considered tax resident in Germany, cf. Article 4 (1) of the DBO. 2, letter a.

If the Danish Tax Agency believes that it cannot be determined where Spørger has the center of its life interests, and that the Danish Tax Agency thus does not agree that Spørger's tax domicile can be determined in accordance with Article 4 (1) of the DBO.
2, letter a, it must in the first instance be assessed whether the tax domicile can instead be assessed in accordance with letter b.

Pursuant to Article 4 (1) of the DBO. 2, letter b, the tax domicile of a natural person is determined according to where he usually resides.

This is stated in the DJV section **CF8.2.2.4.1.2 ,** that "[I] the length of the period to be assessed in order to determine where the person usually resides […] must cover a sufficiently long period to enable the frequency, duration and regularity of the stay to be assessed as part of the person's established life habits; , ie stays that are not merely temporary. "

From the time when Spørger acquired a home in Denmark - which can also be said to be the time from when Spørger has had a more recurring stay in Denmark - Spørger's stay in Denmark and Germany, respectively, has been relatively equal. The same is expected to be the case for 2020, where Questioner expects to have

in the vicinity of 140 days in Denmark compared to approximately 120 days in Germany.

IN **SKM2019.454.SR** The Tax Council assessed that it was not possible to determine whether the questioner would stay most days in Denmark or in the Netherlands, as this would depend primarily on the extent of work-related travel to other countries. However, the Tax Council estimated that the distribution of days between Denmark and the Netherlands would reportedly be relatively equal, as the difference would hardly be more than 20-30 days on an annual basis. Therefore, the Tax Council assessed that the application of the DBO's Article 4, para. 2, letter b, could not - based on what was stated about the applicant's residence pattern - lead to it being established with certainty that the applicant usually (ie predominantly) resided in one country rather than another.

As the difference between Spørger's residence in Denmark and Germany, respectively, is comparable to the applicant's residence pattern in the above-mentioned binding answer from the Tax Council, it is our opinion that Spørger's tax domicile will not be determined according to the DBO's 2, letter b, why it should instead be decided according to letter c.

According to Article 4 of the DBO, skt. 2, letter c, the Questioner shall be deemed to be resident for tax purposes in the state of which he is a national. Since Spørger is a German national, he must thus be regarded as tax resident in Germany, cf. Article 4 (1) of the DBO. 2, letter c.

Representative's consultation response of 13 October 2020

Although we can see that your recommendation to the Tax Council is in accordance with our perception of where Spørger should be considered to have its tax domicile, we still have a few comments on the case presentation and the reasons for the recommendation, cf. below.

In addition, we would like to ask you to be aware that Spørger - as it also appears in the fact section, maintains his usual daily life and connection to Germany, which has been built up since he was born - even after the family moved to Denmark. In our view, this is also to be regarded as personal interests. We therefore do not completely agree that Spørger has no personal interests in Germany after the family moved to Denmark.

Finally, we would like to emphasize that, although we agree that a German bank account is not a weighty argument for a person's economic affiliation with a specific country, we think that the bank account receives relatively much attention in the explanatory memorandum, that we have stated the bank account together with a number of circumstances, cf. the following section: "Questioner continues to reside in the family's residence in Germany, just as Questioner also has his German car, his German bank account and a German mobile subscription".

The Danish Tax Agency's recommendation and justification

Questions 1

We would like to confirm that Spørger is considered to be tax resident in Germany.

Reasons

The question concerns an interpretation of Article 4 of the double taxation agreement between Denmark and Germany. The justification contains the Danish Tax Agency's and thus only Denmark's assessment of Spørger's tax domicile. If Germany does not agree with the assessment, it is in accordance with Article 4 (1) of the Double Taxation Convention. 2, letter d, the competent authorities in Denmark and Germany, respectively, to negotiate.

The assessment of tax domicile pursuant to Article 4 of the double taxation agreement between Denmark and Germany presupposes in accordance with subsection (1) of the article. 1, letter a, that Spørger is fully taxable to both Denmark and Germany according to both countries' internal rules.

Spørger and his family are reportedly still living in Germany, and it is assumed that Spørger is fully taxable in Germany according to German rules in this regard. In addition, it must be assumed, as stated by Spørger, that Spørger upon acquisition of permanent residence in Denmark and subsequent stay in this country will be fully taxable in Denmark according to the withholding tax act § 1, paragraph. 1, no. 1, and § 7, para. 1.

Pursuant to the double taxation agreement between Denmark and Germany, Article 4, para. 2, it follows that where a natural person may be deemed to be a resident of both States, he shall be deemed to be a resident of the State in which he either:

a) has permanent residence at his disposal,

b) has the strongest personal and financial connections (center of his life interests), usually resides,

c)

d) is a citizen.

This is a priority order.

Since the Inquirer is fully taxable in both States and has permanent housing available in both States, the Inquirer must be deemed to be tax resident in the State with which he has the strongest personal and financial relations (center of his life interests).

Article 4 of the double taxation agreement between Denmark and Germany is interpreted in accordance with the OECD model.

It follows from the comments on the OECD model, Article 4, that when a natural person has permanent residence in both Contracting States, it is necessary to look at the actual conditions in order to determine with which of the two Contracting States he has the strongest personal and economic relations. Thus, his family and social circumstances, his employment, his political, cultural or other activities, his place of business, the place from which he manages his assets, etc. must be taken into account. The circumstances must be judged as a whole, but it is nevertheless obvious , that considerations due to the natural person's own actions must be given special attention.

As regards Spørger's personal interests, Spørger's spouse and children - according to what Spørger stated - will reside in Denmark for a maximum of 7 years, in connection with the couple's acquisition of year-round housing in this country. The acquisition of housing and the family's connection to Denmark takes place after a number of years of residence in Germany. The move to Denmark is due to the fact that Spørger's spouse is Danish and thus wants the children to be introduced to Danish culture and the Danish language. Asker will then not have personal interests in Germany.

On this basis, the Danish Tax Agency finds that Spørger has the most important personal connections to Denmark.

As far as the financial interests are concerned, Spørger mainly has these interests in Germany, as this is where Spørger works as a responsible partner in his family group and where he has his ongoing performance of his income-generating profession. This base of interests continues after the Enquirer and spouse have acquired housing in Denmark and the spouse and children have moved here.

Questioner has stated that he has a bank account in Germany. However, the existence of a bank account in a country is not in itself a decisive element, as it cannot simply be taken as an expression of a long-term and thus significant connection to that country. Bank accounts are thus of minor importance compared to the financial connection which exists by virtue of Spørger's position and central role in the family business in Germany.

On the other hand, it is assumed that Spørger has no income from Denmark.

On this basis, the Danish Tax Agency finds that Spørger has the most significant economic connections to Germany.

The Danish Tax Agency thus finds that the Questioner has his most important personal connections to Denmark, and his most important financial connections to Germany. It is then the opinion of the Danish Tax Agency that in this case it cannot be decided in which state the Questioner has the center of his life interests.

You can refer to **SKM2016.496.SR ,** which is very reminiscent of the present case. Questioner had a dual domicile on the basis of residence in both Denmark and Italy. In addition, the spouse and children lived in Denmark so that the children could experience the Danish culture, primary school, etc., while Spørger's work in a family group was carried out and the associated income was essentially created in Italy. The questioner thus had significant personal connections to Denmark and significant economic connections to Italy. The Tax Council could therefore not determine where the questioner had the center of his life interests, so the case had to be decided according to the residence criterion.

Questioner has referred to the decision **SKM2016.382.SR ,** where the taxpayer had both his main economic and personal interests in the other country (USA). In the present case, the questioner has the most important economic interests in Germany and the most important personal interests in Denmark. Thus, there are significant differences in the circumstances of the two cases.

It must then be assessed whether the tax domicile can be determined based on where the Questioner usually resides, cf. the double taxation agreement between Denmark and Germany, Article 4 (1). 2, letter b.

It is stated that Spørger in the coming 12-month period expects to stay approx. 140 days in Denmark, approx. 121 days in Germany and approx. 103 days in third countries. The distribution of days between Denmark and Germany will reportedly be relatively equal, as the difference will hardly be more than 20-30 days on an annual basis.

In this connection, the questioner has referred to **SKM2019.454.SR ,** which deals with a similar pattern of residence. In this case, the Tax Council assessed that the distribution of days between Denmark and the Netherlands according to what the Inquirer stated would be relatively equal, as the difference will hardly be more than 20-30 days on an annual basis. The Tax Council assessed that the double taxation agreement between Denmark and the Netherlands Article 4, para. 2, letter b, thus could not lead to it being established with certainty that the Questioner usually (ie predominantly) resided in one country over the other. The tax domicile was then determined in accordance with the double taxation agreement between Denmark and the Netherlands, Article 4 (4) (c), on citizenship.

The application of the rule in the double taxation agreement between Denmark and Germany Article 4, para. 2, letter b, in the present case, and thus the answer to the question on this basis, presupposes in the opinion of the Danish Tax Agency that it can be established with certainty that Asker usually ie. predominantly residing in one country over another. Reference is made here to the comments on Article 4 (1) of the OECD model. 2 (b), point 19.

Based on the information about the Applicant's residence pattern, the application of the double taxation agreement between Denmark and Germany will be Article 4, para. 2, letter b, does not lead to the fact that it can be established with certainty that the Questioner usually, ie. predominantly, residing in one country rather than another. If there is a change in the residence pattern than stated, this may, however, change the assessment of where Spørger is domiciled for tax purposes.

The questioner's tax domicile must therefore be assessed on the basis of the rule in the double taxation agreement between Denmark and Germany, Article 4 (1). 2, letter c, on citizenship, cf. **SKM2019.454.SR ,** where the citizenship criterion was also applied.

It is stated that the Questioner is a German national.

The Danish Tax Agency therefore finds that the Questioner must be considered to be domiciled in Germany for tax purposes, and that Denmark will only become a source country by allocating the right to tax under the double taxation agreement between Denmark and Germany.

The Danish Tax Agency's comments on the consultation response of 13 October 2020

The Danish Tax Agency maintains that Spørgers has its most important personal connections in Denmark. In its assessment, the Board has only paid attention to what was stated by Spørger. In addition, the Representative himself writes that it is their opinion that Spørger has his primary personal connections in Denmark.

The Danish Tax Agency maintains the separate section on Spørger's German bank account. As the question of whether the existence of a bank account in a country matters is often dealt with in similar cases, it is relevant to take a position on this in the present case.

Setting

The Danish Tax Agency recommends that question 1 be answered with "Yes".

The Tax Council's decision and justification

The Tax Council agrees with the Danish Tax Agency's recommendation and justification.

Legal basis, preparatory work and practice

Questions 1

Legal basis

Section 1 of the Withholding Tax Act (excerpt)

The obligation to pay income tax to the state in accordance with the rules of this Act is incumbent on:

1. Persons residing in this country

The Withholding Tax Act, section 7, subsection 1

For a person who acquires residence in this country without simultaneously taking up residence here, tax liability arises in accordance with the provision in section 1, subsection. 1, no. 1, only when he takes up residence in this country. Such a stay is not considered a short stay in this country due to vacation or the like.

Extract of the Double Taxation Agreement between Denmark and Germany (BKI No 158 of 06/12/1996) Article 4

TAX PLACE

1. For the purposes of this Convention, the term "a resident of one of the States" means any person who, under the law of that State, is liable to tax there by reason of his domicile, residence, seat of management or any other criterion of a similar nature. However, the term does not include a person who is liable to tax in that State solely on income from sources in that State or property located there.

2. In cases where, under the provisions of paragraph 1, a natural person is a resident of both States, his status shall be determined in accordance with the following rules:

a) he shall be deemed to be a resident of the State in which he has permanent residence at his disposal; if he has a permanent residence at his disposal in both States, he shall be deemed to be a resident of the State with which he has the strongest personal and economic relations (the center of his life interests);

b) if it cannot be determined in which State he has the center of his life interests, or if he does not have a permanent residence at his disposal in any of the States, he shall be deemed to be a resident of the State in which he has habitual residence;

c) if he habitually resides in both States, or if he does not reside in either of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States, or if he is not a national of either of them, the competent authorities of the States shall settle the matter by mutual agreement.

(…)

Practice

Article 4, paragraph Article 4 (2) of the Double Taxation Agreement with Germany corresponds to Article 4 (2) of the OECD Model Agreement. Excerpt from the Legal Guide 2019-2, **CF8.2.2.4.1.2**

Resident according to the model agreement

The model agreement contains rules that must make it possible to determine where a natural person with a dual domicile is to be considered a resident within the meaning of the agreement. See Article 4 (1) of the Model Agreement. 2.

The model agreement's set of rules consists of four rules:

- Rule No. 1: Permanent housing available, and if there is permanent housing in both countries, where the person has the strongest personal and financial connections (center of vital interests)
- Rule No. 2: Usual Residence Rule No. 3:
- Citizenship
- Rule No 4: Mutual agreement between the competent authorities.

The rules are applied in such a way that all cases are first tried in accordance with rule no.

If it can not be determined where the person in question is domiciled on the basis of permanent residence and center of life interests (Rule No. 1), it must be assessed where the person in question usually resides (Rule No. 2).

If it cannot be determined on this basis where the person in question is domiciled, the decision is made on the basis of citizenship (rule no. 3).

If the person concerned is a national of both or none of the countries concerned, the decision shall be taken by mutual agreement between the competent authorities (Rule No 4).

Also see

- **CF8.1.1** on the concepts of source and country of residence
- **CF8.2.2.3 (** Article 3) on competent authorities.

Rule No. 1: Permanent housing available and center of life interests

A natural person with a dual domicile is considered to be a resident of the country in which he or she has a permanent residence available within the meaning of the model agreement. See Article 4 (1) of the Model Agreement. 2, letter a, 1. led.

A natural person with dual domicile who has a permanent residence available in both countries is considered, within the meaning of the model agreement, to be resident in the country where he or she has the strongest personal and financial connections. This is also called the center of life interests.

In this connection, emphasis is placed on:

- where the person has his family (and other social connections)
- where the person has his political, cultural affiliation or other activities
- where the person has his place of business, the place from which the person manages his activities, etc.

The circumstances must be judged on the basis of a whole. The fact that the person maintains his residence in the country where he has always lived, where he has worked, and where he has his family and property, together with other elements may create a presumption that he has retained the center of his life interests in this country.

See Article 4 (1) of the Model Agreement. 2, litra a, 2. led. (…)

The housing agreement's concept of housing

The model agreement has a different housing concept than that used in Danish law. According to the model agreement, a person has permanent housing available if the person owns or has a dwelling of a permanent nature. Under Danish law, a luxury holiday home without a permit for year-round living will in principle not be considered to constitute a permanent home. The model agreement, on the other hand, only emphasizes whether the home can actually be used permanently. See point 13 of the commentary to Article 4 of the Model Agreement.

Conversely, the home is not considered to be available to the person within the meaning of the model agreement if, for example, the person rents out his owner-occupied home and effectively leaves the home to an independent party, so that the person no longer has access to it and the opportunity to stay there. See point 13 of the commentary to Article 4 of the Model Agreement.

After **KSL§ 1 ,** PCS. 1, no. 1, on the other hand, the residence is basically preserved.

Note

There may also be disagreement between the countries in applying the above-mentioned rules, e.g.

- whether housing is available, or
- where the center of the person's life interests is.

Such disagreement may also be resolved by the conclusion of a mutual agreement between the competent authorities. However, the countries are not obliged to find a solution. See Article 25 (1) of the Model Agreement. 2, and paragraph **CF8.2.2.25 .**

SKM2019.454.SR

The Tax Council stated that it appears from Article 4, para. Article 4 (2) (a) of the double taxation agreement between Denmark and the Netherlands and Article 4 (2) of the OECD model. 2, letter a, that both the personal and financial connections are relevant in the assessment of the center of life interests.

The Danish Tax Agency had the most important personal connections to the Netherlands, but the most important financial connections to Denmark.

The Danish Tax Agency did not agree with the questioner that personal connections should be given more weight than financial interests.

As the questioner has his most important personal connections to the Netherlands and his most important economic connections to Denmark, the Tax Council found that it could not be determined in which state the questioner had the center of his life interests.

It was then to be assessed whether the tax domicile could be determined based on where the questioner usually resided, cf. the double taxation agreement between Denmark and the Netherlands, Article 4 (1). Based on what was stated about the applicant's residence pattern, the Tax Council found that the application of the rule in the double taxation agreement between Denmark and the Netherlands, Article 4, para. 2, letter b, could not lead to it being established with certainty that the questioner usually ie. predominantly resided in one country rather than another. The applicant's tax domicile therefore had to be assessed on the basis of the rule in the double taxation agreement between Denmark and the Netherlands, Article 4 (1). 2, letter c on citizenship.

SKM2016.496.SR

The Tax Council found that the applicant's economic interests suggested that the applicant should be considered to have the center of his life interests in Italy. The questioner's personal interests, on the other hand, suggested that the questioner should be considered to have the center of his life interests in Denmark. The Tax Council then found that it could not be determined in which state the questioner had the center of his life interests. Questioner should therefore be considered to be a resident of the State in which he usually resided, which was Italy.

SKM2016.382.SR

Questioner lives and works in the United States. Questioner is a co-owner of the company he works for and which is headquartered in the United States. Questioner has lived and been taxable in the United States since 1976.

The Tax Council can confirm that full tax liability does not occur, cf. the withholding tax act, section 7, subsection. 1, when the applicant acquires an apartment in Denmark and does not perform work of any kind during his stays in Denmark.

The Tax Council finds that this is commercial employment that entails full tax liability, cf. section withholding tax.
7, when asking during his stays in Denmark, answers telephone calls, emails and SMS daily, as there is no sporadic work when this is fixed and predictable. In addition, the enquirer participates in 4-6 annual planned visits to Danish companies and 1-2 annual visits to an industry organization.

Finally, the Tax Council finds that the questioner's tax domicile is in the USA, in accordance with the double taxation agreement between Denmark and the USA.

It appears from the case file that the questioner's center of life interests based on an overall assessment as the situation was described by the questioner was in the United States.
In the assessment, emphasis was placed on the fact that the questioner had a girlfriend with whom he lived on the weekends in the USA, and that the questioner's children and grandchildren lived in the USA.

In addition, it was emphasized that the questioner currently had the most significant part of his financial interests in the USA, and that this would also be the case in the future based on pension savings, etc. in USA.

Questioner had stated that he worked in a company in the United States, of which he was also a co-owner. In addition, the questioner was a member of 2 boards in the United States. Finally, the questioner was a member of various committees. In addition, the questioner had stated that in addition to the public pension and health insurance in the USA, he had a private pension and extended health insurance with a company in the USA.