**INTERNATIONAL TAXATION**

**Posted workers**

**Residency status, assessment of income tax and the claiming of benefits under international treaties**

**Detailed description**

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1.0 Residency status of posted workers

Slovenian undertakings that provide services using posted workers in other countries often employ foreign natural persons (mainly workers from Bosnia and Herzegovina, and other Western Balkan countries) who have been granted non-residency status for tax purposes upon arrival in Slovenia and entry in the tax register. Foreign natural persons perform work for a Slovenian employer in Slovenia and other countries. This affects the residency status of those taxable persons.

A natural person is classed as resident in Slovenia if they meet at least one of the conditions set out in Article 6 of the [Personal Income Tax Act (ZDoh‑2)](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697):

- they have an officially declared address of permanent residence in Slovenia;

- they are habitually resident in Slovenia or have the centre of their personal and economic interests in Slovenia;

- they are present in Slovenia for a total of more than 183 days at any time in the tax year, etc. [[1]](#footnote-1)

If none of the conditions set out in Article 6 of the ZDoh‑2 are met, the person is classed as a non-resident of Slovenia.

In order to formally arrange residency status in Slovenia (i.e. entry of the appropriate residency status in the tax register), an application to establish residency status, duly supported by evidence, must be submitted to the competent financial office. With a view to enabling the tax authority to assess all the facts and circumstances relevant to an individual’s residency status when it is determining that status, taxable persons may make use of the [Determination of residency status (arrival in/departure from Slovenia)](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=ugotovitev_rezidentstvo_fo) questionnaire.

Completing the questionnaire is not a prerequisite for starting the procedure, nor is it a mandatory component of an application to determine tax status. If a taxable person does not wish to complete the questionnaire, they may use other means to prove the facts and circumstances relevant to their residency status. They enclose the relevant documents or supporting evidence, if they have them and if they believe them relevant to the process of determining their residency status, with the application/questionnaire.

In practice, it is often in a foreign natural person’s interest to obtain residency status in Slovenia for the purposes of the ZDoh‑2; they therefore submit an application for Slovenian residency status to the tax authority as soon as they meet any of the conditions set out in Article 6 of the ZDoh‑2. When handling the application, the tax authority defines the taxable person (in this case a foreign natural person) as a resident of Slovenia by declaratory decision if at least one of the conditions set out in Article 6 of the ZDoh‑2 is met. However, the decisions may grant the status (resident, non-resident) for a limited or unlimited period of time, depending on the facts and circumstances of each case.

More information on establishing residency for tax purposes can be found on the Financial Administration of the Republic of Slovenia website under the detailed description [Residency under the ZDoh‑2, the ZDDPO‑2 and international treaties](http://www.fu.gov.si/davki_in_druge_dajatve/podrocja/mednarodno_obdavcenje/#c4654).

The process of assessing whether the specific conditions set out in Article 6 of the ZDoh‑2 have been met by foreign natural persons is summarised below:

* **An officially declared address of permanent residence in Slovenia (point 1 of Article 6 of the ZDoh‑2):**

If a taxable person has an officially registered address of permanent residence in Slovenia, they are, as a general rule, classed as a resident from the day they register the address, without a limit placed on the duration of that status (or from a prior period if, during that period, they meet any other condition set out in Article 6 of the ZDoh‑2).

* **Habitual residence or the centre of personal and economic interests in Slovenia (point 5 of Article 6 of the ZDoh‑2):**

These are two different (independent) conditions on the basis of which a person may be considered to be a resident of Slovenia: the first condition provides that the person has their habitual residence in Slovenia and the second condition provides that the person has the centre of their personal and economic interests in Slovenia.

Individuals have their habitual residence in Slovenia if they regularly, usually or habitually reside in Slovenia in the normal course of their life. Fulfilment of this condition therefore cannot be assessed or established when the individual arrives in Slovenia (e.g. in the tax year in which a foreign natural person arrives for the first time in Slovenia, or re-enters it, for employment with a Slovenian employer).

Therefore, when assessing whether the condition of habitual residence in Slovenia is met, it is important that, depending on the actual circumstances, the residence in Slovenia constitutes the individual’s home, even if they are present in Slovenia for the sole purpose of employment.

If a taxable person has neither their officially registered address of residence nor their habitual residence in Slovenia, an assessment is made of the person’s personal and economic interests in Slovenia:

* a taxable person who has no personal interests (partner, children) in any country is classed as a resident from the day they are employed by a Slovenian employer, for an unlimited period of time (if they have a permanent employment contract) or for a limited period of time (if they have a fixed-term employment contract). In these cases, the taxable person has an economic interest in Slovenia;
* a taxable person who has moved to Slovenia together with their family (partner, children) and is employed by a Slovenian employer is classed as a resident from the day their family arrives in Slovenia and for an unlimited period of time. In these cases, the personal and economic interests of the taxable person are in Slovenia.

Regarding the assessment of the condition referred to in point 5 of Article 6 of the ZDoh‑2 (centre of personal and economic interests) in relation to taxable persons (foreign natural persons) who have no personal interests in any country and are posted by a Slovenian employer to work in another country, the tax authority considers that economic interests are distributed between the two countries for the purpose of assessing the centre of economic interests. In Slovenia there is the formal employer, with the workers in Slovenia also being covered by compulsory pension and disability insurance and receiving part of their income from employment. In the country of posting, workers physically carry out the employment and receive the remaining part of their income from employment, on which tax is also generally charged and paid in that country. In such cases, the following procedure is therefore conducted:

* if those taxable persons submit an application to establish their residency status in order to obtain the status of **non-resident** and it is established that, for the majority of the year, they carry out work under an employment contract outside Slovenia and receive part of their income from employment in another country as well, their economic interests are considered to be stronger in the other country. This means that the condition set out in point 5 of Article 6 of the ZDoh‑2 is not met and those taxable persons are classed as non-residents of Slovenia for the purposes of the ZDoh‑2;
* however, if those taxable persons submit an application to establish their residency status in order to obtain the status of **resident**, their economic interests in Slovenia are taken into account, which means that the condition set out in point 5 of Article 6 of the ZDoh‑2 is met and they are classed as residents of Slovenia for the purposes of the ZDoh‑2 (in these cases, the tax authority does not assess in which country the economic interest is stronger, but only takes account of the fact that there is an economic interest in Slovenia).
* **Presence in Slovenia for more than 183 days in a tax year (point 6 of Article 6 of the ZDoh‑2)**

If a taxable person (a foreign natural person who is employed by a Slovenian employer and carries out work under a contract within and outside Slovenia) does not meet the above-mentioned conditions set out in Article 6 of the ZDoh-2 (i.e. they have neither an officially registered address of residence nor a habitual residence in Slovenia, are employed by a Slovenian employer and their family resides abroad), that person is classed as a resident once the requirement of presence in Slovenia of 183 days is met in the course of the tax year. Presence in Slovenia for more than 183 days in a tax year is proven in these cases by the employment contract, which establishes the place of work during a specified period, or the employer’s certificate (statement) of days present at the place of work in Slovenia. If the taxable person complies with this condition only, the period of residency is, as a general rule, limited within each tax year. However, for taxable persons (foreign nationals) who have been resident in Slovenia for several years, who, in the previous year or years, only satisfied the condition of presence in Slovenia for more than 183 days, and who request residency status in their application for an unlimited period of time, an assessment is made of whether the condition of habitual residence in Slovenia may be met (point 5 of Article 6 of the ZDoh‑2). If this condition is met, the period of residency is not limited in the decision issued by the tax authority.

Therefore, if the person does not meet the other conditions for being classed as a resident, they may be classed as a resident solely on the basis that they have a physical presence in Slovenia for more than half the tax year (183 days). Whether the person is present in Slovenia for 183 days continuously or with interruptions is irrelevant to this condition. The tax year is the same as the calendar year.

A person is considered to be a resident of Slovenia from the moment that they are present in Slovenia for the first time in the tax year (e.g. if they come to Slovenia at the beginning of April of the current tax year and remain until the end of the year, they are considered to be a resident of Slovenia from the beginning of April until the end of the year). If they arrive in Slovenia in the second half of the current tax year (e.g. at the beginning of July), they cannot be considered to be resident in Slovenia in that tax year under the criterion set out in point 6 of Article 6 of the ZDoh‑2.

Days present in Slovenia include days when a person is present in Slovenia at the end of the day; days of presence therefore include the day of arrival and all other days that the person spends entirely in Slovenia, including Saturdays and Sundays, public holidays and personal holidays. Days of presence in Slovenia do not include the day of departure from Slovenia, days when the person is present in Slovenia solely because they are transiting through Slovenia and days that the person spends entirely outside Slovenia, on business trips, holidays, etc.

If the condition set out in point 6 of Article 6 of the ZDoh‑2 is met during the entire tax year, the tax authority issues a decision granting the person Slovenian residency status for the purposes of the ZDoh‑2 for that period.

The tax authority therefore grants Slovenian residency status by decision to persons who meet one or more of the conditions for acquiring residency status set out in Article 6 of the ZDoh‑2, if it is in the interests of the person to acquire Slovenian residency status and, consequently, pay tax in Slovenia on the global income principle.[[2]](#footnote-2) In cases where the taxable person does not themselves initiate the procedure to determine residency status and the tax authority’s official records show that they meet any of the conditions set out in Article 6 of the ZDoh‑2, the tax authority initiates a procedure to determine residency status ex officio.

It is very important to correctly determine the residency status of individuals for the purposes of the ZDoh‑2 as it affects both the procedures for assessing income tax in Slovenia and the procedures for claiming benefits under international treaties for the avoidance of double taxation of income (hereinafter: international treaty/treaties) through so-called ‘KIDO’ claims, as follows.

1.1 Applications by foreign natural persons to obtain residency status in Slovenia for the purposes of the ZDoh‑2, submitted for individual ‘intermediate’ months of a tax year

In the case of applications for the acquisition of residency status for the purposes of the ZDoh‑2 submitted only for individual (including intermediate) months of the tax year, the tax authority assesses whether the conditions set out in Article 6 of the ZDoh‑2 have been met throughout the tax year.

The tax authority therefore grants Slovenian residency status by decision to persons who meet one or more of the conditions set out in Article 6 of the ZDoh‑2 required for the acquisition of residency status in Slovenia for the purposes of the ZDoh‑2 for the entire period of time during which the person meets those conditions (or at least one condition). It is therefore not possible to grant residency status to a taxable person for the purposes of the ZDoh‑2 only for individual months within this time period, even if this would be more advantageous for the taxable person.[[3]](#footnote-3) When determining residency, the tax authority is obliged to take into account the taxable person’s ties of residency in accordance with the criteria set out in Article 6 of the ZDoh‑2 over a specific period, and not their potential interest in being classed as a resident in individual months (or even days) of that period, despite the same actual situation over a specific period, and in individual months of that period as a non-resident. Such a practice would be contrary to the applicable tax legislation (i.e. the ZDoh‑2).

When determining the period in an individual tax year during which an individual meets at least one of the conditions set out in Article 6 of the ZDoh‑2 for being granted Slovenian residency status, a distinction must be made between:

* cases where the individual actually **meets at least one condition** (or several conditions) set out in Article 6 of the ZDoh‑2 for Slovenian residency status **for only part of the tax year**:

Example 1:

An individual establishes ties of residency on 5  February 2020 and terminates all such ties on 23  November 2020. In this case the individual is classed as a resident from 5  February 2020 to 23  November 2020.

Example 2:

An individual has had ties of residency in Slovenia for several years and terminates them on a specific day in an individual tax year. For example, they were present in Slovenia continuously for many years until 31  March 2021, after which they left Slovenia and terminated all relevant ties of residency, and returned to Slovenia on 1 December 2021 and restored one or more ties of residency. In this case the individual may be classed as a Slovenian resident only for individual months in the tax year (in this particular case, from 1  January 2021 to 31  March 2021, and from 1  December 2021 to 31 December  2021).[[4]](#footnote-4)

* Cases where an individual wishes to obtain Slovenian residency status for the purposes of the ZDoh‑2 only **for certain intermediate months (or periods) of the tax year** although they meet the condition set out in indent (e) of Article 6 of the ZDoh‑2 throughout the tax year:

The formal condition (officially registered address of permanent residence in Slovenia) may, in practice, only be met for individual intermediate months (or periods) of a tax year. The tax authority therefore checks, in the course of the declaratory procedure, whether the individual may also meet any of the actual conditions (habitual residence in Slovenia, centre of personal and economic interests in Slovenia and presence in Slovenia for more than 183 days in total at any time of the tax year) in the tax year in question.

When verifying whether the actual conditions are met, the tax authority takes into account the circumstances over a longer period of time. The individual is therefore habitually resident in Slovenia if they usually or habitually reside in Slovenia in the normal course of their life. Personal interest is linked to the presence of an individual’s family members (partner, children) over a certain period of time in one or another country. The existence of an individual’s economic interests is also monitored comprehensively over a specified period of time, which means that account must be taken of the country in which the individual is employed and covered by compulsory pension and disability insurance, and not just the months or periods during which the individual is carrying out employment for their employer in Slovenia or other countries. The condition of 183 days in a tax year in Slovenia is also met within an individual tax year if the individual has been present for more than 183 days in that tax year, regardless of whether they have been posted abroad for individual intermediate periods in that year.

1.2 An application for non-residency status for previous tax years in which a taxable person has been classed as a Slovenian resident and has already been the subject of a final income tax assessment decision

A residency status decision explicitly apprises taxable persons to whom residency status has been granted for the purposes of the ZDoh‑2 (for a limited or unlimited period of time) of the requirement to submit a new residency status application to the tax authority if the facts and circumstances relevant to their established status change, and to do so within eight days of the occurrence of the change. Based on the new application and the supporting evidence submitted, the tax authority reassesses the residency status. If the taxable person fails to submit a new application and the tax authority becomes aware of new facts and circumstances that affect the established status, it reassesses the person’s residency status ex officio.

A taxable person who has not appealed against the decision identifying them as resident in Slovenia for the purposes of the ZDoh‑2 and who has not communicated changes in facts and circumstances affecting their residency status to the tax authority in a timely manner (i.e. within eight days) is charged income tax for the previous tax year (i.e. a provisional income tax statement is issued). That person is obliged, in their objection to the provisional income tax statement at least, to report the actual situation and to object to the status of resident of Slovenia for the purposes of the ZDoh‑2 if they did not actually meet any of the conditions set out in Article 6 of the ZDoh‑2 in the previous tax year.

Taxable persons who have been identified by decision as residents of Slovenia for the purposes of the ZDoh‑2 for a specified period often fail to report changes to their circumstances to the tax authority for the purpose of the reassessment of residency status within eight days of the occurrence of the change; at the same time, the tax authority is not aware of the new facts and circumstances that affect their residency status, and therefore an ex officio reassessment of residency status cannot be initiated.

If these taxable persons submit an application to obtain non-residency status for previous tax periods for which they have been classed as Slovenian residents, the tax authority can reassess residency status for the purposes of the ZDoh‑2 only for those periods for which no final income tax assessment decision has yet been issued to them. In these cases, the taxable persons are also obliged to provide supporting evidence showing that they do not meet any of the conditions set out in Article 6 of the ZDoh‑2 in the specified past period:

* if, on the basis of the supporting evidence submitted, the tax authority approves the request for determination of non-resident status for the purposes of the ZDoh‑2 and identifies the taxable person as non-resident for a specific tax period, the taxable person’s objection to Slovenian residency status in the objection to the provisional income tax statement is upheld and income tax is not charged for that period;
* the tax authority rejects the request for determination of non-residency status for the purposes of the ZDoh‑2 if the supporting evidence submitted shows that the taxable person was actually considered to be resident for the purposes of the ZDoh‑2 in the specified tax period. In this case the tax authority also refuses to uphold the objection to the provisional income tax statement in which the taxable person objects to Slovenian residency status.

However, if a taxable person files an income tax return for a tax year, they must apply the change in residency status (from resident to non-resident) in the procedure carried out prior to the issuing of the income tax assessment decision, or at the latest in the appeal against the issued assessment decision.

For taxable persons who submit an application for non-residency status for previous tax periods for which they have been classed as Slovenian residents and for which a final income tax assessment decision has already been issued, the tax authority rejects the application for non-residency status for the purposes of the ZDoh‑2 in accordance with points 3 and 4 of Article 129(1) of the [General Administrative Procedure Act (ZUP)](http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603), as the request has not been filed by the prescribed deadline[[5]](#footnote-5) and a final decision has been issued in the (residency status) case.

An individual’s rights and obligations are also tied to their residency status (resident or non-resident). Residents of Slovenia are therefore obliged to comply with the tax procedure rules applicable to residents of Slovenia; this means that, as residents of Slovenia, they are required to submit tax returns or file objections by the prescribed deadline and in the prescribed manner. Along with the prescribed deadlines for submitting returns or objections, there is also a final deadline for filing requests for an assessment of their residency for the purposes of the ZDoh‑2.

If a taxable person who has been identified by tax authority decision as resident in Slovenia for the purposes of the ZDoh‑2 during a specified period and in relation to income that counts towards the annual tax base has not already exercised the rights related to the annual income tax assessment in the objection to the provisional income tax statement, the income tax return or the appeal against the decision issued on the basis of the tax return or objection to the provisional income tax statement (i.e. has also not objected to Slovenian residency status for the purposes of the ZDoh‑2 and has not submitted supporting evidence that the conditions set out in Article 6 of the ZDoh‑2 have not been met in the individual tax year or part of the tax year), the conditions for challenging the final income tax assessment on the basis of the application of the extraordinary legal remedy of the reopening of the procedure are not met.

2.0 Claiming of benefits under the provisions of international treaties on the avoidance of double taxation on income

Where Slovenian undertakings provide services using posted workers (non-residents) in other countries, due regard must also be paid to the provision of Article [15 of the international treaties on the avoidance of double taxation](https://www.fu.gov.si/davki_in_druge_dajatve/podrocja/mednarodno_obdavcenje/#c78) (hereinafter: international treaty/treaties), which governs the right to tax income from employment.[[6]](#footnote-6)

More information on the taxation of posted workers’ income from employment can be found in the detailed descriptions [Taxation of income from employment under international treaties](https://www.fu.gov.si/davki_in_druge_dajatve/podrocja/mednarodno_obdavcenje/#c4654), [Tax treatment of income of workers posted abroad](https://www.fu.gov.si/davki_in_druge_dajatve/podrocja/dohodnina/dohodnina_dohodek_iz_zaposlitve/#c4620) and [Tax paid retrospectively by posted workers on income from employment abroad](https://www.fu.gov.si/davki_in_druge_dajatve/podrocja/mednarodno_obdavcenje/#c4654), as well as in the business event [I provide services abroad with posted workers – non-residents](https://www.fu.gov.si/poslovni_dogodki_podjetja/v_tujini_opravljam_storitve_z_napotenimi_delavci_nerezidenti/).

If a resident of the other contracting state carries out work for a Slovenian undertaking in the territory of another state and not in Slovenia, the income recipient’s country of residence has the exclusive right to tax that income under the provisions of the international treaty (usually Article 14 or 15). This means that a non-resident may exercise the benefits under international treaty (tax exemption, tax refund) for income from employment earned through work outside Slovenia.

Non-resident income recipients who wish to benefit from an international treaty (i.e. exemption from making an income tax prepayment in Slovenia) must submit to the payer of the income a completed [Request for exemption from the payment of tax on income from employment (except pensions) under the provisions of an international treaty on the avoidance of double taxation (KIDO 5)](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=zmanjsanje_oprostitev_fo) before the income is paid. The payer of tax submits a completed request to the competent tax authority, but does not calculate or withhold the tax on the income paid once a verified request from the tax authority is received. If the income tax referred to in the international treaty has already been charged despite the exemption, the income recipient may file a [Request for a refund of tax on other incomes under the provisions of an international treaty on the avoidance of double taxation (KIDO 12 claim)](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=vracilo_fo) with the tax authority. The tax is then refunded on the basis of that request. Confirmation that the income recipient is a resident of the other contracting state and, at the tax authority’s request, any other supporting evidence that proves compliance with the conditions for exemption from tax in Slovenia, form an integral part of the KIDO 5 or KIDO 12 claim. A certificate of residency is issued by the competent authority of the income recipient’s country of residence.

Benefits under an international treaty may also be claimed by a dual resident (a resident of Slovenia under the ZDoh‑2 and a resident of another contracting state under the provisions of the domestic law of that state) who considers that, for the purposes of the international treaty, they are only considered to be a resident of the other contracting state.

2.1 Determination of residency status for the purposes of the ZDoh‑2 in procedures for claiming benefits under international treaties (KIDO claims)

The tax authority may issue a decision classing as a resident of Slovenia for the purposes of the ZDoh‑2 a taxable person who has been identified as a non-resident of Slovenia for the purposes of the ZDoh‑2 in the procedure of resolving a KIDO claim and who has been granted benefits under the international treaty in the decision until the expiry of a specified period, on the basis of a certificate classing them as a resident of the other contracting state, only from the expiry of this period onwards, provided that they meet at least one of the conditions set out in Article 6 of the ZDoh‑2.

For taxable persons who are claiming benefits under international treaties on the basis of KIDO claims, the tax authority checks residency status for the purposes of the ZDoh‑2 in advance.

If a taxable person has non-residency status recorded in the tax register and the tax authority determines, on the basis of information from official records, that they could be classed as a Slovenian resident for the purposes of the ZDoh‑2 during the period in question (the period for which the KIDO was submitted), it first initiates the procedure for determining residency status under the ZDoh‑2 ex officio.

If the procedure for determining residency status establishes that a taxable person actually meets any of the conditions set out in Article 6 of the ZDoh‑2 during the period to which the KIDO claim refers, the tax authority issues a decision classing that person as a resident of Slovenia on the basis of the ZDoh‑2.

2.2 Claiming benefits under international treaties – dual residents

A dual resident (a resident of Slovenia under the ZDoh‑2 and a resident of another contracting state under the provisions of the domestic law of that country) who considers that, for the purposes of the international treaty, they are only considered to be a resident of the other contracting state, may claim rights under the international treaty (i.e. exemption from the payment of tax, reduced tax payments, refunding of tax paid abroad) in procedures for the claiming of benefits under an international treaty, as follows:

* in the relevant procedures for assessing the income tax prepayment or the (annual) income tax, by indicating in the relevant section, comments or annex of the [income tax return for assessing income tax (prepayment) forms and the tax return for assessing income tax on income from capital and the letting of property forms](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageB.aspx?category=dohodnina_in_prispevki_prebivalci) that they are also classed as resident in the other contracting country, and the relevant provision of the international treaty establishing the right to tax the type of income declared in the return. A certificate from a foreign tax authority confirming tax residency of that country must also be submitted.
* by submitting a [KIDO claim for exemption from the payment of tax or a reduction in tax payments](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=zmanjsanje_oprostitev_fod) before the income is paid through the payer of tax pursuant to Article 260 of the [Tax Procedure Act (ZDavP‑2)](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) or by filing a [KIDO claim for a tax refund](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=vracilo_fod) after payment of the income pursuant to Article 262 of the ZDavP-2. In this case as well, the relevant provision of the international treaty establishing the right to tax the type of income earned must be indicated and a certificate from a foreign tax authority confirming tax residency of that country provided.

When a taxable person claims benefits under an international treaty because of dual residency, the tax authority also invites the taxable person to submit a [questionnaire for assessing the residency status of persons with dual residency for the purposes of claiming benefits under international treaties](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=ugotovitev_rezidentstvo_dvojno_obdavcenje_fo).

More information on this can be found in the third chapter of the detailed description [Residency under the ZDoh‑2, the ZDDPO‑2 and international treaties](http://www.fu.gov.si/davki_in_druge_dajatve/podrocja/mednarodno_obdavcenje/#c4654).

2.3 ****Claiming benefits under an international treaty by a dual resident for periods in which the taxable person has already been given a final income tax assessment decision****

If a taxable person (dual resident) claims benefits under an international treaty in a KIDO claim for a tax refund relating to a tax year in which they have already been classed as a resident of Slovenia for the purposes of the ZDoh‑2 and for whom a final income tax assessment decision has already been issued for that tax year, the tax authority rejects the KIDO claim pursuant to point 4 of Article 129(1) of the ZUP on the grounds that the case has already been finally decided upon in the income tax assessment decision.

Taxable persons who are classed as dual residents (residents of Slovenia for the purposes of the ZDoh‑2 and, at the same time, residents of the other contracting state) are, like all residents of Slovenia, obliged to comply with the tax procedure rules applicable to residents of Slovenia; this means that, as residents of Slovenia, they are required to submit tax returns or file objections by the prescribed deadline and in the prescribed manner. Along with the prescribed deadlines for submitting returns or objections, there is also a final deadline for filing requests for an assessment of their residency for the purposes of implementing international treaties.[[7]](#footnote-7)

In relation to income that counts towards the annual tax base, which includes income from employment, the tax authority determines the income tax on an annual basis by a decision issued pursuant to the tax return, in the manner laid down in Article 267 of the ZDavP‑2, i.e. on the basis of the provisional income tax statement. It follows that, as a general rule, resident taxable persons may exercise rights related to the annual assessment of income tax in their returns or in an objection to the provisional income tax statement. A taxable person has the right to apply regular legal remedies (appeals) against a decision issued on the basis of a return or objection to a provisional income tax statement, whereby they may invoke any irregularity in the assessment decision.

This means that if, during a specific period, a taxable person who is resident in Slovenia for the purposes of the ZDoh‑2 was also classed as a resident of the other contracting state according to the tax legislation of that other state and has not exercised, in relation to income that counts towards the annual tax base, the rights related to the annual income tax assessment in the objection to the provisional income tax statement, the tax return or the appeal against a decision issued pursuant to the tax return or the objection to the provisional income tax statement (i.e. also benefits under international treaties in the case of dual residents), the conditions for challenging the final income tax assessment by applying the extraordinary legal remedy of the reopening of the procedure are not met. An exception is only made in cases where a resident of Slovenia would subsequently be found to be a resident of the other contracting state in the course of controls performed by the tax authority of that other state and, therefore, that income tax would be levied in that state as well.

2.4 ****Claiming benefits under an international treaty by a dual resident for periods in which the taxable person has not yet been given a final income tax assessment decision****

1. A taxable person claims benefits for income originating in Slovenia by submitting a KIDO 12 claim.

If a taxable person claims benefits under an international treaty by submitting a KIDO 12 claim (and submits a certificate of residency of the other country) for periods when a final income tax assessment decision has not yet been issued to the taxable person[[8]](#footnote-8)), and that person is indicated as a resident of Slovenia for the purposes of the ZDoh‑2 in the tax register, the tax authority first applies the tie-breaker rules set out in Article 4 of the international treaty for dual residents[[9]](#footnote-9) pursuant to the submitted certificate of residency of the other contracting country and to all the collected facts and circumstances of the individual case, in order to determine which of the two countries the person is sole resident of for the purposes of the international treaty:

* if an individual is classed as a **resident of Slovenia** for the purposes of the international treaty as well, no benefits are granted under the international treaty (the KIDO 12 claim is rejected). The taxable person also remains indicated in the tax register as a resident of Slovenia, which means that they are charged income tax;
* if an individual is classed as a **non-resident of Slovenia** for the purposes of the international treaty, they are, for periods after 1  January 2017, classed as a non-resident of Slovenia under Article 7(2) of the ZDoh‑2[[10]](#footnote-10) for the period in question, as indicated in the foreign residency certificate and in which the individual is classed as a non-resident of Slovenia under the international treaty. At the same time, a decision is made on the right to benefits under the international treaty (i.e. the refunding of tax on income from employment earned by working abroad). The status of non-resident under Article 7(2) of the ZDoh‑2 is recorded in the tax register, which means a provisional income tax statement will not be issued for that non-resident person for the entire year.[[11]](#footnote-11) If a provisional income tax statement has already been issued and a taxable person with non-residency status has objected to it or filed an appeal against a decision issued pursuant to the tax return or to an objection to the provisional income tax statement, that person is deemed to be exempt from income tax for the entire year.
1. A taxable person claims benefits for income originating in Slovenia in the objection to the provisional income tax statement or the income tax return.

If a taxable person claims benefits under an international treaty only during the income tax assessment procedure[[12]](#footnote-12) (i.e. in an objection to a provisional income tax statement or an income tax return or in an appeal against a decision issued pursuant to a tax return or objection to a provisional income tax statement), and submits a certificate of residency of another country for periods when they are indicated, in the tax register, as a resident of Slovenia for the purposes of the ZDoh‑2, residency status for the purposes of the international treaty is first established in the income tax assessment procedure. On the basis of the tax residency certificate issued by the other contracting state and all the established facts and circumstances of the case in question, the Slovenian tax authority first applies the tiebreaker rules set out in Article 4 of the international treaty to determine, for the purposes of the application of the international treaty, which of the two countries the person is the sole resident of.

* if, in the course of the procedure to resolve an objection to a provisional income tax statement or tax return it is established that the individual is classed as a **resident of Slovenia** for the purposes of the international treaty as well, no benefits are granted under the international treaty and the individual is charged income tax;
* if in the course of a procedure to resolve an objection to a provisional income tax statement or tax return an individual is classed as a **non-resident of Slovenia** for the purposes of the international treaty, they are, for periods after 1  January 2017, classed as a non-resident of Slovenia under Article 7(2) of the ZDoh-2[[13]](#footnote-13) for the period in question, as indicated in the foreign residency certificate and in which the individual is classed as a non-resident of Slovenia under the international treaty. At the same time, a decision is made on the right to benefits under the international treaty for income originating in Slovenia (i.e. **exemption** from the payment of tax on income from employment earned by working abroad). Non-residency status under Article 7(2) of the ZDoh‑2 is recorded in the tax register. A taxable person with non-residency status is not charged income tax for the entire year. The taxable person requests a **refund** of tax paid on the income from employment earned by working abroad by submitting a KIDO 12 claim, which forms the basis for the refunding of the tax.

2.5 Claiming benefits under international treaties because of dual residency for individual months within a tax year

The conditions applied by countries in determining residency status often overlap and can lead to **dual residency**, which is assessed according to the criteria set out in Article 4 of the OECD Model Tax Convention on the Income and on Assets. These criteria favour the connection of a taxable person to one country over its connection to another country.

If a taxable person claims benefits under international treaties because of dual residency for individual months of a tax year, the tax authority establishes residency for the purposes of the international treaty (and consequently the status of non-resident of Slovenia under Article 7(2) of the ZDoh‑2 for periods after 1 January 2017) for the **entire tax period of validity of the foreign residency certificate**, while the right to benefits under the international treaty is assessed for the income paid for the individual months of the tax year for which the claim is made (for posted workers, the benefits can only be claimed on income from employment earned during the periods of the tax year in which they worked abroad).

A certificate of residency is issued by the competent authority of the income recipient’s country of residence. Residency of another country under the domestic law of that country may be proved by means of supporting evidence other than a residency certificate, as well as by evidence that the individual is taxed on the global income principle in another country during a certain period.

The submitted certificate or proof of residency of the other contracting state indicates that the individual is classed as a resident of the other contracting state in a given calendar year or other period.[[14]](#footnote-14)

This means that the other country taxes that individual during this period on the global income principle. Consequently, the tax authority classes an individual who has been defined solely as a resident of the other contracting state by application of the tie-breaker rules set out in Article 4 of the international treaty for the purposes of the international treaty as a non-resident of Slovenia under Article 7(2) of the ZDoh-2 for the entire period of validity of the foreign residency certificate. This also achieves the basic purpose of the international treaties, namely that an individual will not be classed as a resident of both contracting states at the same time during the same period, and will consequently be taxed on the basis of the global income principle.

1. Article 6 of the ZDoh‑2 lists several conditions for acquiring residency status. The most common are highlighted here. [↑](#footnote-ref-1)
2. Residents of Slovenia are liable for income tax on all income which originates in Slovenia and all income originating outside Slovenia (Article 5 of the ZDoh‑2). [↑](#footnote-ref-2)
3. Taxable persons (foreign natural persons) often wish to remain non-residents of Slovenia in certain months of the tax year as they have been posted abroad by their Slovenian employer during this period and are claiming benefits under an international treaty, on the basis of KIDO claims, for the income earned during the period in question. More details on this are provided in the second chapter. [↑](#footnote-ref-3)
4. This individual does not meet the condition set out in point 6 of Article 6 of the ZDoh‑2 in 2021 (presence in Slovenia for more than 183 days in a tax year), but may meet the other conditions set out in Article 6 of the ZDoh‑2, as determined in a declaratory procedure. [↑](#footnote-ref-4)
5. The deadline is prescribed in Article 55 of the [Financial Administration Act (ZFU)](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6792), which provides that a person who is entered in the tax register must, within eight days of the occurrence of the change, notify the financial office of a change to the information contained in the tax register that is not obtained by the financial office ex officio. Information on the taxable person’s residency status in the tax register is laid down in point 5 of Article 49(1) of the ZFU. [↑](#footnote-ref-5)
6. In some international treaties, income from employment is regulated in Article 14. [↑](#footnote-ref-6)
7. This applies to all tax returns (and objections raised), both for income that is included in the annual income tax assessment and for income that is not included in the annual income tax assessment. [↑](#footnote-ref-7)
8. Therefore, before a provisional income tax statement, a decision pursuant to an objection to a provisional income tax statement/income tax return or a decision issued pursuant to an appeal against a decision issued on the basis of the income tax return or objection to the provisional income tax statement is issued. [↑](#footnote-ref-8)
9. More information regarding the application of the tie-breaker rules set out in Article 4 of an international treaty and the assessment of residency status under an international treaty during periods up to the end of 2016 and periods from 1 January 2017 onwards is provided in the third chapter of the detailed description [Residency under the ZDoh‑2, the ZDDPO‑2 and international treaties](http://www.fu.gov.si/davki_in_druge_dajatve/podrocja/mednarodno_obdavcenje/#c4654). [↑](#footnote-ref-9)
10. The provision of Article 7(2) of the ZDoh‑2 has applied since 1  January 2017, and provides that, without prejudice to Article 6 of the ZDoh‑2, a taxable person is classed as a non-resident during the period in which they would have been classed as a resident under that act if, during that period, they are classed as a resident of another contracting state only under an international treaty on the avoidance of double taxation of income concluded by Slovenia. [↑](#footnote-ref-10)
11. A provisional income tax statement for a specific previous year is not issued if non-residency status is recorded in the tax register before expiry of the deadlines for issuing the provisional income statement. [↑](#footnote-ref-11)
12. These are taxable persons (dual residents) who, by the expiry of the deadlines for the submission of returns (objections), had not claimed benefits under international treaties on individual incomes originating in Slovenia by submitting KIDO claims. [↑](#footnote-ref-12)
13. The provision of Article 7(2) of the ZDoh‑2 has applied since 1  January 2017, and provides that, without prejudice to Article 6 of the ZDoh‑2, a taxable person is classed as a non-resident during the period in which they would have been classed as a resident under that act if, during that period, they are classed as a resident of another contracting state only under an international treaty on the avoidance of double taxation of income concluded by Slovenia. [↑](#footnote-ref-13)
14. If the period during which an individual is classed as a resident of another contracting state is not indicated in the certificate of residency issued by a foreign tax authority, that certificate is considered to be valid for a period of 12 months from the day it is issued (i.e. a certificate issued in March 2021 is valid until March 2022). [↑](#footnote-ref-14)