

Portugal - Information on residency for tax purposes

Section I – Criteria for Individuals to be considered a tax resident

As a general rule, an individual is qualified as a resident of Portugal if:

- he is present in Portugal for more than 183 days, consecutive or otherwise, in any 12-month period starting or ending in the calendar year concerned; or
- he is in Portugal for a shorter period, but he has on any day during the period mentioned in the previous subparagraph, an home under circumstances which imply his intention to keep and occupy such abode as his permanent residence;
- he is, on 31 December of any year, a crew member of a ship or aircraft operated by a resident entity;
- he is performing public functions or commissions for the Portuguese state.

Moreover, an individual is qualified as a resident of Portugal if he is a Portuguese national who moves his residence for tax purposes to a country, territory or region subject to a clearly more favourable tax regime included in a list approved by Ministerial Order of the member of Government responsible for the tax area, unless he proves that the change is for a valid reason, such as being seconded by his employer for performing a temporary activity.

Relevant tax provision

Article 16 of Personal Income Tax Code (CIRS) in Portuguese is available at http://info.portaldasfinancas.gov.pt/NR/rdonlyres/8787D561-FF96-4DC1-B8B3-23A4AC97947E/0/CIRS_01_2015.pdf

In accordance with Article 16 of CIRS,

“1 – As a general rule, an individual shall be qualified as resident of Portugal if, during the year to which the income concern:

- a) he is present in Portugal for more than 183 days, consecutive or otherwise, in any 12-month period starting or ending in the calendar year concerned;
- b) he is Portugal for a shorter period, but he has, on any day during the period mentioned in the previous subparagraph, an home under circumstances which imply his intention to keep and occupy such abode as his permanent residence;
- c) he is, on 31 December of any year, a crew member of a ship or aircraft operated by a resident entity;
- d) he is performing public functions or commissions for the Portuguese state.

2 – For the purposes of the previous paragraph, day of presence in the Portuguese territory shall be deemed to be any day, whole or part, involving an overnight stay.

3 – The persons meeting the requirements under subparagraphs 1(a) or 1(b) shall be deemed to be resident since the first day of their stay in the Portuguese territory, unless they have been resident therein on any day of the previous year, in which case they shall be deemed to be resident in this territory since the first day of the year in which any of the requirements provided for in paragraph 1 is met.

4 – An individual shall cease to be qualified as resident as of the last day of his stay in the Portuguese territory, except in the cases provided for in paragraphs 14 and 16.

5 – Tax residence shall be evaluated against each taxable person of the household.

6 - Moreover, an individual shall be qualified as resident of Portugal if he is a Portuguese national who moves his residence for tax purposes to a country, territory or region subject to a clearly more favourable tax regime included in a list approved by Ministerial Order of the member of Government responsible for

the tax area, in the year that change occurs and in the four subsequent years, unless he proves that such change was for a valid reason, such as being seconded by his employer for performing a temporary activity on behalf of such employer who is resident in the Portuguese territory.

7 – Subject to the period mentioned in the previous paragraph, the resident status provided therein shall subsist only as long as such change of the tax residence of the taxable person to a country, territory or region subject to a clearly more favourable tax regime included in a list approved by Ministerial Order of the member of Government responsible for the tax area persists, and it shall no longer apply in the year where he shall be deemed to be resident of a country, territory or region other than those.

(...)”

Section II – Criteria for Entities to be considered a tax resident

Legal entities are resident in Portugal when they have their registered legal seat or place of effective management in Portugal. Resident legal entities are all types of commercial companies. Please see Article 2 of Corporate Income Tax (IRC) Code in Portuguese, available at <http://info.portaldasfinancas.gov.pt/NR/rdonlyres/DB0D5898-6686-41CA-A750-3498D9BCB579/0/CIRC.pdf>

Companies are generally incorporated pursuant to the Portuguese Commercial Companies Code (CSC) and are considered legal persons in Portugal. Three types of companies are mentioned in the CSC in addition to the European Companies which are governed by the EU Council Regulation and Decree-Law 2/2005:

- Limited Liability Company (LLC) (Sociedade por quotas);
- Joint Stock Company (SA) (Sociedade anónima);
- Partnership Limited by Shares (PLS) (Sociedade em comandita por ações); and
- European Company (SE) (Sociedade anónima europeia).

The IRC is levied on legal entities that are resident in Portugal or that derive income sourced in the Portuguese territory, namely through a permanent establishment situated in the Portuguese territory (Article 3 of Corporate Income Tax Code in Portuguese is available at <http://info.portaldasfinancas.gov.pt/NR/rdonlyres/DB0D5898-6686-41CA-A750-3498D9BCB579/0/CIRC.pdf>).

Section III – Entity types that are as a rule not considered tax residents

Portuguese tax provisions do not attribute tax residency to certain legal arrangements such as fideicomisos. In such cases, the controlling persons of the fideicomiso are those considered as residents for tax purposes.

Section IV – Contact point for further information

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