

Jurisdiction's name:	SPAIN
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Information on Residency for tax purposes
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Section I – Criteria for Individuals to be considered a tax resident

Taxpayers liable to PIT:

- a) Individuals whose habitual residence is within the Spanish territory.
- b) Individuals habitually resident abroad due to any reason included in Article 10 of this Law.

-a) An individual is resident in Spanish territory when any one of the following circumstances apply:

They have stayed longer than 183 days in Spanish territory over the calendar year. In order to determine the permanence in Spanish territory, occasional absences are included, except if the taxpayer accredits their residency in another country. In the case of countries or territories labelled as tax havens, the Tax Administration can demand proof of stay in that tax haven over a period of 183 days within the calendar year.

They situate the main base or centre of their activities or economic activities, directly or indirectly, in Spain.

They have dependent not legally separated spouse and/or underage children who are usually resident in Spain. This latter situation accepts evidence to the contrary.

Individuals of Spanish nationality who accredit their new fiscal residence in a country or territory labelled as a tax haven will not lose their status as taxpayers for Individual Income Tax. This rule is of application during the tax period in which the change of residence occurs and for the next four tax periods.

Otherwise, where none of the previous situations applies, an individual is considered as non-resident in Spain.

-b) Individuals with Spanish nationality whose usual residence is abroad (these may be, for example, members of our diplomatic missions, consular offices or holders of public offices or civil servants carrying out official work abroad), along with their spouses and children who are minors, are subject to payment of Personal Income Tax, with two exceptions:

Individuals who are not civil servants and whose usual residence was already abroad before any of the aforementioned circumstances arose.

When the usual residence of their non-legally separated spouse or children who are minors was abroad before any of these circumstances arose.

Relevant tax provisions

-Taxpayers liable to PIT – Article 8 of Law 35/2006, of 28 November, on the Individuals Income Tax and partial amendment of the Laws regulating Corporation Tax, Non-Resident's income tax and Wealth Tax, hereinafter PITL.

-Taxpayers with habitual residence in the Spanish territory - Article 9 of PITL.

-Taxpayers with habitual residence abroad - Article 10 of PITL.

Web page

https://sede.agenciatributaria.gob.es/Sede/en_gb/no-residentes/residencia-personas-fisicas-juridicas/persona-fisica-residente-espana.html

a) Individual resident in Spain

b) Taxation of Spanish civil servants working abroad

Regulations

https://sede.agenciatributaria.gob.es/Sede/en_gb/normativa-criterios-interpretativos/impuestos-otros-tributos/impuesto-sobre-renta-personas-fisicas/normativa-basica-irpf.html

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

An entity is considered to be resident in Spain when one of the following requirements are satisfied:

- That it was constituted according to Spanish law.
- That its registered address is in Spanish territory.
- Or that its effective headquarters are based in Spanish territory.

Otherwise, those entities that do not satisfy any of the three foregoing requirements are considered to be non-resident.

The Taxation Office considers an entity based in a tax-free country or territory as resident in Spain when its main assets, directly or indirectly, consist of assets located or rights that are fulfilled or exercised in Spain, or when its main activity is carried out therein, unless it accredits that its direction and effective management take place in that country or territory, and that its incorporation and operations have a valid economic motivation and substantive business reasons other than the simple management of securities or other assets.

Relevant tax provisions

- Residence and tax domicile – Article 8 of Law 27/2014, of 27 November on CIT.

Web page

https://sede.agenciatributaria.gob.es/Sede/en_gb/no-residentes/residencia-personas-fisicas-juridicas/persona-juridica-residente-espana.html

- a) Legal person resident in Spain

Regulations:

https://sede.agenciatributaria.gob.es/Sede/en_gb/normativa-criterios-interpretativos/impuestos-otros-tributos/impuesto-sobre-sociedades/normativa-basica-impuesto-sobre-sociedades.html

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

In general terms, legal entities resident in the Spanish territory are liable to CIT, except civil-law societies with no business purpose.

Apart from legal entities, some non-incorporated entities are also liable to CIT as regulated, when they reside in the Spanish territory.

-Agricultural processing companies regulated under Royal Decree 1776/1981, of 3 August, approving the Rules regulating the Agricultural processing companies.

-Investment Funds regulated by Law 35/2003, of 4th November on Collective Investment Institutions.

-Temporary joint ventures regulated by Law 18/1982, of May 26th, on the Tax System for Groupings and TJV, and for Regional industrial development companies.

-Venture capital funds and closed collective investment funds regulated by Law 22/2014 of November 12th regulating the venture-capital entities, other closed collective investment entities and closed collective investment institution management companies, modifying Law 35/2003 of November 4th on Collective investment Institutions.

-Pension funds regulated by the Consolidated Text of the Law Regulating Pension Funds and Pension Schemes, approved by Legislative Royal Decree 1/20052, of November 29h.

-Mortgage market regulatory funds, regulated by Law 2/1981, of 25th March regulating the mortgage market.

-Mortgage securitisation funds, regulated by Law 19/1992, of 7th July on the Regime of Real Estate Investment Funds and Companies and Mortgage Securitisation Funds.

-Asset securitisation funds referred to in the Fifth Additional Provision of Law 3/1994, of April 14th which aligns the Spanish regulations on Credit to the Second Banking Coordination and amends some aspects of the financial system.

-Investment Guarantee Funds regulated by Law 24/1988, of 28th July on Securities Markets.

-Associations owning communal mounts regulated under Law 55/1980, of November 11th on Local Communal Mounts or the relevant regional legislation.

-Bank Assets Funds referred to in the 10th Additional provision of Law 9/2012, of 14th November on reorganisation and winding-up of credit institutions.

Other entities without legal personality (such as unsettled estates, joint-property entities, that constitute a separate economic unit or a separate group of assets liable to taxation, are not liable to CIS but taxed under an allocation system (look-through taxation) under which the income is allocated to the partners, heirs, co-owners or participants. The taxation in Spain will depend on their residency therein. Therefore, the first step is to determine the place where the partner, heir, co-owner or participant has his/her habitual residence under the provisions of Article 9 of PITL in the case of an individual, or under Article 8 of the Companies Law in the case of legal persons. The conclusion from that analysis is that the partner, heir, co-owner or participant of the entity under the allocation system is taxed as resident or non-resident in Spain. In the case of non-residents, the existence or not of permanent establishment in Spain will be considered.

Finally, income derived by entities under allocation system shall be allocated to the partners, heirs, co-owners or participants under the provisions of Article 89 of PITL.

Regulations

- Taxpayers – Article 7 of Law 27/2014, of November 27th on CIT.
- Taxpayers – Article 35 Law 58/2003, of 17th December, General Tax Law.
- Income Allocation – Articles 86 to 90 of PITL.

Web page

https://sede.agenciatributaria.gob.es/Sede/en_gb/normativa-criterios-interpretativos/impuestos-otros-tributos.html

Section IV – Contact point for further information

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