



INFOTAX – November 2019



TAX RESIDENCE FOR
NATURAL PERSONS

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The concept of “tax residence” was introduced for the first time in the Tax Reform Act No. 18.083, **being one of the pillars upon the new Uruguayan regime of income taxation was structured.**

The Personal Income Tax (*“Impuesto a la Renta de las Personas Físicas”*) (PIT - IRPF) regulations state it would be understood that the taxpayer has its tax residence within national territory if any of the following circumstances are met:

- (A) **The taxpayer stays more than 183 days during a civil year within Uruguayan territory.** In order to determine the presence within national territory, sporadic absences would be computed in the conditions set forth by the regulation, unless the taxpayer proves its tax residence in a different country.
- (B) **The taxpayer has within national territory its main core or base of its activities, or economic or vital interest.**

The Tax Office (*“Dirección General Impositiva”*) (DGI) is the competent authority for the issuance of certificates which prove tax residency in Uruguay.

(A) Objective criteria: 183 days

The regulation states that in order to determine the period of presence of the natural person within Uruguayan territory, **it would be considered all days of effective presence in the country, disregarding the hour in which the entry or exit occurred.** It would not be computed those days in which the person is in transit as passenger within Uruguayan territory, in the context of a trip between third countries.

An absence from Uruguayan territory **shall be considered as sporadic provided that it does not exceed 30 calendar days,** unless the taxpayer proves its tax residence in another country. Tax residence in another country should be proved through a certificate of residence issued by the competent tax authority of the corresponding State.

In this respect, it is important to highlight the **Judgment No. 179/019 issued by the Administrative Contentious Tribunal (“Tribunal de lo Contencioso Administrativo”)** (TCA) related to this criterion.

(A) Objective criteria: 183 days (cont.)

The referred judgment makes relation to an individual of Spanish nationality who made a request to the Tax Office in order to obtain the issuance of a certificate evidencing his tax residence in Uruguay.

To such purpose, the individual chose the “days criteria”, i.e., tried to prove to the Tax Office his permanence in Uruguay during at least 183 days during the year, computing in this sense not only the days of effective permanence within the Uruguayan territory but also his “sporadic absences”. The person referred that such circumstances were proved by the corresponding entry and exit certificates issued by the Department of Immigration (“*Dirección Nacional de Migraciones*”).

Based on a literal interpretation of the referred criterion, it was concluded by the individual that the application of such criterion to the case requires computing the days of effective presence within the national territory during the year (in his case, no more than 80 days) and then adding those absences which do not exceed 30 calendar days.

(A) Objective criteria: 183 days (cont.)

According to this understanding, in the case that the result of this operation leads to an amount equal or exceeding 183 days, then it corresponds to consider that the individual has its tax residence within national territory.

However, the petition was rejected by the Tax Office stating that the legal requirement of the physical presence were not satisfied by the individual and therefore the “days criterion” was not complied in order to be considered as resident in Uruguay.

In this respect, the Tax Office expressed that it is necessary to make an interpretation of the tax rules to determine the meaning of “residence” and “presence”, in order to determine the condition of resident (or not) of a natural person.

In addition, the Tax Office highlighted that, as a general rule, the concept of “residence” is connected with the place where someone lives, considering to its determination both objective (physical presence) and subjective (facts and circumstances) aspects.

(A) Objective criteria: 183 days (cont.)

Regarding the concept of “presence”, the Tax Office referred that it implies a situation of stability and durability throughout the time, and not something sporadic, accidental and occasional.

The Tax Office understood that the literal interpretation proposed by the individual it was not in line with the rationale of the rule, violating its meaning and purpose. In this sense, it was pointed out that the Legislator’s purpose was to require in fact (substance over form) certain presence of the individual within the national territory in order to its consideration as Uruguayan tax resident.

To summarize, and after having analyzed the migration movements, *the Tax Office concluded that the individual’s permanence in Uruguay was significantly lower than its absences. As a consequence, what it was sporadic is the presence in Uruguay.*

(A) Objective criteria: 183 days (cont.)

To clarify, the physical permanence criterion requires the natural person's presence within national territory. **Although the possibility to compute the sporadic absences, such absences should be not only brief (i.e. not exceeding 30 days), but also occasional, i.e. happening under an infrequent or isolated basis.**

Finally, the Tribunal shared the Tax Office's position in the matter, stating that it is not in line with the rule's purpose to consider as "sporadic" those absences which occur under a high frequency basis, as it happened in the case under analysis where the individual spent more days abroad than within Uruguay. Then, the question that arises is: is it reasonable to consider as a Uruguayan resident a person who effectively spent in our country only 76 days in a year, which are scarcely more than 2 months and a half? According to the Tribunal's judgment, the answer is negative.

In this sense, the Tribunal pointed out that the Legislator's aim requiring a permanence period within the country of more than 183 days was to evidence in fact (substance over form) certain permanence of the natural person within the national territory. In the case decided by the Tribunal, such presence was not verified.

(A) Objective criteria: 183 days (cont.)

In fact, in the case under analysis the alleged “sporadic” absences became the rule, turning the effective permanence within the national territory into an exceptional circumstance, altering the permanence required to the granting of the tax residence.

To summarize and in order to prevent an abuse of the current rules, **the Tribunal considers that the repeated absences of an individual during the year cannot be considered as “sporadic”**. Under such understanding, the Tribunal confirmed the Tax Office’s opinion.

(B) Subjective criteria

As it was mentioned before, the legislation proposes additional criteria in order to determine the tax residence:

- Base of activities
- Economic interests
- Vital interests

(B) Subjective criteria (cont.)

- *Base of activities*

The tax rules state that an individual has the main core or base of its activities located within the national territory **when the volume of income generated in Uruguay exceeds the volume obtained in any other country.**

Notwithstanding the above, base of activities **is not verified for obtaining capital income exclusively (“rentas puras de capital”)**, even when the individual has all its assets within Uruguayan territory.

Regarding this criterion, the Tax Office stated that **it should be considered the “gross” income under an annual basis**, and that **the comparison should be made under a country-by-country basis** and not taking into account the sum of all countries.

(B) Subjective criteria (cont.)

▪ *Economic interests*

Unless the taxpayer proves its tax residence in another country, **it shall be considered that an individual has the base of its economic interests when it has in Uruguay:**

- (a) **An investment on real estate (immovable property) for a value exceeding 15:000.000 UI (fifteen millions of Indexed Units, approximately USD 1.850.000).** For this purpose, it shall be considered the adjusted fiscal cost of each property, or
- (b) **An investment (directly or indirectly) on a company for a value exceeding 45:000.000 UI (forty-five millions of Indexed Units, approximately USD 5.600.000), which comprehends activities or projects declared of national interest** according to the Act No. 16.906 of January 7th, 1998 and its regulations. In order to determine the investment's value, it shall be considered the valuation rules contained in the Corporate Income Tax (CIT-IRAE) regulations.

(B) Subjective criteria (cont.)

▪ *Vital interests*

It shall be presumed that the taxpayer has its vital interests in Uruguay **when its spouse/husband and under-aged children who depend on him/her reside within the Uruguayan territory, provided that the spouse/husband is not legally divorced and the children are subject to parental authority.** In case there are not children, **the presence of the spouse/husband is sufficient.**

Further considerations

Capital gains from movable property originated in deposits, loans and, in general, upon any other placement of capital or credit of any nature, **which are paid by a non-resident entity and obtained by a PIT-IRPF taxpayer are subject to PIT-IRPF taxation (this situation is an exception to the source's principle which governs Uruguayan tax law).**

However, the tax regulations state that the individuals who acquire the condition of Uruguayan tax resident **would be able to choose to be subject to the Non-Resident Income Tax (NRIT) in the fiscal year when the change of residence is verified and during the following five fiscal years.** Such option shall be chosen **only once and exclusively related to the capital gains afore-mentioned.**

This option entails that **during such period of time the “new” tax resident shall not pay taxes for such income from capital gains.**



Further considerations (cont).

This option shall be considered as taken with the submission to the tax liable person (*“responsable designado”*) of a sworn statement intended to the Tax Office. In case there is no tax liable person, the taxpayer should submit the sworn statement directly to the Tax office.

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